No. 4409

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United States

Circuit Court of Appeals

For the Ninth Circuit.

OLD COLONY TRUST COMPANY, a Corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Appellants,

vs.

UNION LAND & CATTLE COMPANY, a Corporation, and W. T. SMITH, Receiver of said UNION LAND & CATTLE COMPANY, Under and by Virtue of That Certain Order Given and Made by the Above-entitled Court in the Above-entitled Action on July 28, 1920, and to J. W. DORSEY and W. E. CASHMAN,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for the District of Nevada.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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Appellants,

vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Notice of Application for Compensation of Attorneys of Union Land and Cattle Company and Special Counsel for the Receiver, and for Repayment of Costs and Expenses Advanced and Paid in Behalf of Said Union Land & Cattle Company and Its Creditors. 4

and MILTON R. CLARK, as Trustees under and by virtue of that certain Deed of Trust or Indenture dated September 1st, 1916, and executed by the Union Land & Cattle Company to said First Federal Trust Company and Milton R. Clark, as Trustees, which petition was filed herein on or about the 18th day of May, 1923,

AND

Petition of FIRST FEDERAL TRUST COMPANY and MILTON R. CLARK, as Trustees, etc. for leave to intervene and to sell properties in possession of the Receiver, which petition was filed herein on or about the 25th day of August, 1923,

AND

Petition of FIRST NATIONAL BANK OF SAN FRANCISCO, a corporation, for an order directing liquidation and sale of properties, which petition was filed herein on or about the 25th day of August, 1923,

AND

Petition of FIRST NATIONAL BANK OF CHICAGO for leave to intervene and for an order directing liquidation and sale of property, which petition was filed on or about the 31st day of August, 1923,

AND

Petition of FIRST NATIONAL BANK OF BOSTON for leave to intervene and for an order directing liquidation and sale of property, which petition was filed on or about the 31st day of August, 1923, [2]

AND

Petition of NATIONAL SHAWMUT BANK OF BOSTON for leave to intervene and for order directing liquidation and sale of property, which petition was filed herein on or about the 31st day of August, 1923,

AND

Petition of NATIONAL BANK OF COMMERCE OF NEW YORK for leave to intervene and for order directing liquidation and sale of property, which petition was filed herein on or about the 31st day of August, 1923,

AND

Petition of FIRST NATIONAL BANK OF ST. LOUIS for leave to intervene and for order directing liquidation and sale of property, which petition was filed herein on or about the 31st day of August, 1923,

AND

Petition of OLD COLONY TRUST COMPANY for leave to intervene and for order directing liquidation and sale of property, which petition was filed herein on or about the 31st day of August, 1923,

AND

Petition of NATIONAL CITY BANK for leave to intervene and for order directing liquidation and sale of property, filed herein on or about the 31st day of August, 1923,

AND

Petition of RECEIVER for authority to purchase livestock and to borrow money, which peti-

tion was filed herein on or about the 26th day of October, 1923. [3]

NOTICE OF APPLICATION FOR COMPENSATION OF ATTORNEYS OF UNION LAND & CATTLE COMPANY, AND SPECIAL COUNSEL FOR THE RECEIVER, AND FOR REPAYMENT OF COSTS AND EXPENSES ADVANCED AND PAID IN BEHALF OF SAID UNION LAND & CATTLE COMPANY AND ITS CREDITORS.

NOTICE IS HEREBY GIVEN, that on the 18th day of June, 1924, at the courtroom of the above-entitled court, in Carson City, Nevada, at the hour of ten (10) o'clock A. M. of said day, or as soon thereafter as counsel can be heard, the undersigned will apply to said Court for an order authorizing the Receiver of UNION LAND & CATTLE COMPANY to repay to the undersigned the moneys by them advanced, laid out and expended for transportation, hotel charges and other expenses by them incurred in trips to and from said Carson City, and while there, and in and about and for the benefit of said Company, its creditors and all interested in the matter of said receivership, from May, 1923, to May, 1924, inclusive. And also for reasonable compensation for professional services as attorneys for said Cattle Company, and as special counsel for said Receiver and in the interest of said Cattle Company and of its creditors and others concerned in the properties in the hands of said Receiver; and all in protecting the

properties and estate of said Cattle Company in the hands of said Receiver from spoliation, waste, sacrifice and destruction.

The moneys expended by the undersigned for the purposes aforesaid aggregate the sum of Six Hundred Twenty and 57/100 Dollars ($620.57).

The fee which will be asked through the motion above mentioned for the professional services rendered by the undersigned during the period above limited, will be the amount to be fixed by the Court as a reasonable compensation [4] for the professional services referred to in and about the petitions, orders and appeals therefrom, heard and made in the above-entitled court, and for services performed in the several appeals taken from orders entered by the above-entitled court in said above enumerated matters.

The said motion will be based upon this notice, the records and files in the above-entitled matters, oral and written evidence to be introduced at the hearing of said motion, and the information and knowledge possessed by said Court.

Dated this 9th day of June, 1924.

(Sgd.) J. W. DORSEY and
(Sgd.) W. E. CASHMAN,
Attorneys for Defendant. [5]

Receipt of a copy of the within notice of applica-

tion for compensation and for repayment of costs, etc., is hereby admitted this 10 day of June, 1924.

_____,

Attorneys for Complainant.

McCUTCHEN, OLNEY, MANNON & GREENE,

Attorneys for Appellants.

M. R. JONES,

JONES & DALL,

Attorneys for First Federal Trust Co. et al, Trustees.

[Endorsed]: In Equity—B–11. In the District Court of the United States, in and for the District of Nevada. First National Bank of San Francisco, etc., Complainant, vs. Union Land & Cattle Company, etc., Defendant. Notice of Application for Compensation of Attorneys and for Repayment of Costs, etc. Original. Filed June 18, 1924. E. O. Patterson, Clerk. W. E. Cashman, J. W. Dorsey, Attorneys at Law, 201 Sansome Street, San Francisco, Cal., Attorneys for Defendant. [6]

No. B–11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Plaintiff,

vs.

UNION LAND & CATTLE COMPANY, a Corporation,

Defendant.

MINUTES OF COURT—JUNE 19, 1924—HEARING ON PETITION FOR COMPENSATION OF ATTORNEYS—SUBMITTED.

The further hearing on the petition for attorney fees for Dorsey and Cashman came on regularly this day, the same counsel and parties being present. Mr. Greene states that he reluctantly reverts to certain statements made by the Court as to some inproprieties of parties to this suit and asks the Court to be more explicit in his statements. The Court states that he will write an opinion in this matter and fully cover his position therein but will make no statement at this time and counsel will have to wait until the said opinion is filed for his answer. Mr. J. W. Dorsey resumes the stand upon further cross-examination, after which petitioners rest. Messrs. S. W. Belford and J. W. Davey were each duly sworn and W. T. Smith was recalled and all testified for the objecting creditors and during their testimony Mr. Greene offered in evidence a certified copy of this Court's order made and entered March 17, 1924, relative to employment of additional counsel for the Receiver, admitted and ordered marked Creditor's Ex. *No.* "A"; also a certified copy of an order made and entered March 26, 1924, admitted and ordered marked Creditor's Ex. *No.* "B." Thereupon Creditors rest. Upon the Courts' order a certain letter from R. Spreckles to W. T. Smith, dated January 13, [7] 1922, was ordered marked Ex-

hibit No. 1. No further testimony being adduced and after argument by counsel for the respective parties this matter was submitted. [8]

In the District Court of the United States, in and for the District of Nevada.

No. B–11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND & CATTLE COMPANY, a Corporation,

Defendant.

OPINION

McCUTCHEN, OLNEY, MANNON & GREENE, HOYT, NORCROSS, THATCHER & WOODBURN, for Creditors: Old Colony Trust Company, The First National Bank of Boston, National Bank of Commerce in New York, The First National Bank of St. Louis, National Shawmut Bank of Boston, National City Bank, and First National Bank of Chicago.

Mr. J. W. DORSEY and Mr. W. E. CASHMAN, for the Defendant and for the Receiver.

BROWN & BELFORD, for the Receiver. [9]

FARRINGTON, District Judge.

The property of the Union Land & Cattle Com-

pany has been in the hands of W. T. Smith, as Receiver, since July 28th, 1920. He had on hand January 1, 1924, as much land, about 6,000 less sheep and 2300 more cattle than when he took charge of the property. He started with more than $435,000 in bank; he has now $98,074.10 He has paid all expenses of operation, and more than $720,000 of the principal and interest due on secured obligations. Otherwise little or nothing has been accomplished in the way of settling the debts of the concern. For this unsettled condition the Court and the creditors, not the receiver, must be held responsible.

The order of appointment asked for and prepared by the First National Bank of San Francisco, and apparently approved by the creditors, authorized the receiver to collect all the assets of the defendant corporation, to carry on its business "according to the usual course of business of like character, and to employ such employees, accountants, agents, assistants and attorneys as he may deem necessary and proper." The reasons for such an order were thus stated in the complaint:

> "That the assets of defendant if prudently operated and administered can be realized upon over a period of time in amount sufficient to meet all of its liabilities and leave a considerable equity for the stockholders, but that the liabilities of the defendant already matured and those now about to mature cannot be met by the defendant at the present time, or as the same fall due, and defendant cannot at

> this time market its livestock to advantage and by reason of the present financial condition it is impossible for the defendant to get additional credit to refund its obligations due and about to become due, and the defendant is not able and will not be able to meet its obligations as they mature in the ordinary course of business." [10]

This was a clear and confidently expressed judgment that if the estate were prudently managed as a going business under a receivership, the liabilities could be paid and a considerable equity preserved for the stockholders.

Early in 1923 there was filed an agreement to which all or practically all creditors were parties, providing that the property in the hands of the receiver be returned to the defendant company to be managed for a number of years as a going concern by a creditors' committee consisting of attorneys and bank officials, with Warren Olney, a San Francisco lawyer, as president.

This document disclosed a belief on the part of the creditors as late as April, 1923, after three years under the receivership, that the assets of the company could not be liquidated immediately and at forced sale without loss of a large part of their value, and that the property should be liquidated over a considerable period of time, and in an orderly manner. This cannot be construed otherwise than as a deliberately formed opinion that the business of the company should be continued during liquidation.

In May, after strenuous objection had been made to a proposed distribution of about $100,000 of defendant's funds among a number of attorneys acting for the creditors, this agreement was abandoned.

No demand for immediate liquidation had been made up to this time, but within a few weeks, and on the 18th day of May, 1923, the First Federal Trust Company filed a petition praying that it be permitted to foreclose the mortgage or trust deed executed in 1916 by the defendant company to secure the payment of $1,200,000 in bonds. Every installment of principal and interest on these bonds has, and at that time had been, paid promptly. The principal then due amounted to $840,000, or thereabouts. Foreclosure was demanded on the alleged [11] ground that the appointment of a receiver constituted a violation of one of the express provisions of said trust deed. It was then stated by Mr. Olney, attorney for the Trust Company and for the plaintiff, the First National Bank of San Francisco, that foreclosure would cost from $10,000 to $25,000, and it was necessary, because, by reason of the default created by the appointment of the receiver, the trustees named in the trust deed were powerless to release from the lien of said deed any mortgaged lands the receiver might sell. This assumption, kept constantly in the foreground, seems to have been sufficient to render fruitless any attempt on the part of the receiver to sell property covered by the trust deed. Would-be purchasers in view of the

uncertainties, naturally were afraid to invest. Holding the lands and disposing of the livestock, except in limited numbers, was considered as not only unwise, but highly imprudent, for several reasons: First, it would "disrupt and disorganize the business of the Cattle Company"; second, large values would be lost if the lands were stripped of the livestock; third, under the express provisions of the trust deed, Article 3, Section 16, and Article 4, Section 1, it was provided if at any time the livestock was reduced in numbers below 25,000 cattle above one year of age, and 25,000 sheep on the lands of the company or under its control in the States of Nevada or California, that event would constitute a default entitling the trustees to take possession of the mortgaged property, and sell it on such terms as they might fix.

August 24th, 1923, the trustees named in the trust deed, on the ground that the appointment of the receiver constituted a default, filed herein a petition asking that the mortgaged property be surrendered to them to be sold at public auction on such terms as they might fix. Within a short time thereafter eight petitions were presented by the bank creditors, [12] approving the application of said trustees, and asserting that the trustees were "entitled to immediately sell said property described in said trust deed in the exercise of the powers thereby granted." The prayer of the bank petitioners was that all the property of the Union Land & Cattle Company, except such thereof as may be sold by said Trust Company, be sold forthwith. Such a

program involved forced sales of everything belonging to the defendant company under conditions highly unfavorable. More than a year and a half prior to this date, January 13th, 1922, the then president of the Trust Company and of the First National Bank, wrote the receiver as follows:

> "The committee have come to the conclusion that we might as well call the creditors' agreement off and to take immediate steps to secure control of the company's affairs or failing in that to petition the Court for an order to sell the properties.
>
> "The present management has never been in accord with the views of the creditors' committee and they feel that we should not allow it to continue in charge a day longer than necessary. The creditor banks will not finance the company unless they have control of the management either through a receiver, who is in accord with their views, or by actual purchase of the properties at foreclosure sale. I know there will be no change from this determination."

Every installment of interest and principal, amounting at the time to more than $400,000, had been paid out of funds on which the Trust Company had no lien; its security seemed ample, and the alleged default consisted in the appointment of the receiver, made by the Court without any knowledge or warning that under the terms of the trust deed such an appointment could be followed by such serious consequences. Under the circum-

stances it was considered by the Court and the receiver [13] that the claim of right to sell under the trust deed "was unjust and inequitable, and that if sustained on appeal it would cause irreparable loss and injury to the unsecured creditors, the very object the receivership was invoked to prevent"; furthermore, if the mortgaged property were sold at public auction by the trustees, as contemplated by the petitioners, the receiver, having no place to keep the stock, if any remained in his hands, would inevitably be forced to sell it. As a rule, at such sales prices received are small as compared with the value of the thing sold. Forced sales of all the mortgaged real property would therefore have been a calamity to every creditor not able to buy, or participate in buying, the property.

Petitions for orders directing the receiver to surrender the mortgaged property to the trustees, and to sell the remaining property forthwith, were denied, and appeals were speedily taken. The issues were of such vital importance that it was deemed expedient and necessary to employ additional counsel to assist Messrs. Brown & Belford in the presentation of the receiver's cases in the Circuit Court of Appeals. Accordingly, the receiver was directed to retain Messrs. Dorsey and Cashman. They were familiar with all the evidence and the issues involved; they were also heartily in accord, not only with the theory that the Trust Company had waived the alleged default, notwithstanding the provisions against waiver in the trust deed, but that the receivership could not be a default within the meaning

of the trust deed, if, when the receiver was appointed, the Court was not informed that under the trust deed such an order of appointment would constitute a default entitling the trustees to immediate possession of all the mortgaged property, with the right to sell it on such terms as they might fix.

The services performed by them were not only exceedingly valuable, but they are deserving of much larger compensation [14] than the $2500 which I here allow. To argue that their assistance was unnecessary and the employment unwise, might perhaps be regarded as depreciating the ability and legal skill of the array of eminent and confident counsel opposed to the four attorneys representing the receiver.

Trustees etc. vs. Greenough, 105 U. S. 527;
Burden Central Sugar-Refining Co. vs. Ferris Sugar Mfg. Co., 87 Fed. 810.

Said fee of $2500, and the costs necessarily incurred by Messrs. Dorsey and Cashman in printing briefs, etc., will be paid by the receiver.

The purchase of the Lesher land does not at first view seem like liquidation, but on careful consideration it appears to me that its acquisition is not only vital, but that it will faciliate rather than delay sale of the Spanish Ranch. In itself it is well worth the money asked. It is in the mountains and is covered with a large amount of feed; this, with its elevation, makes it valuable as summer range, and especially so in a dry year. Several hundred steers can be fattened thereon each season. It possesses a singular strategic value due to its

location in the heart of a large and valuable range used and claimed in connection with the Spanish Ranch. An independent owner of the tract can graze sheep over the surrounding range in such manner as to take much of its use and value away from those who may be operating the Spanish Ranch. Incomplete control of the range, if a fact, will be given much weight by anyone contemplating purchase of this portion of the property. The receiver was therefore ordered to complete the purchase of the Lesher land.

1 Tardy's Smith on Receivers, 253 et seq. [15]

The time has come when the property must be sold and its proceeds distributed among the creditors. By this it should not be understood that sales must be forced at that season of the year when there is no market, or a very poor one, or that the property is to be unnecessarily sacrificed in order that liquidation may be accomplished to-day rather than to-morrow. The interests of the unsecured creditors must be kept in view, and likewise the fact that the receiver is still confronted by the trust deed, and the restrictions contained therein. It is essential to the good title of a purchaser that the lands sold be released from the lien of the trust deed.

The provision that any reduction of the livestock below 25,000 cattle over one year old, and 25,000 sheep, shall constitute a default entitling the trustee on notice to take possession of all the mortgaged lands and the livestock thereon, has not been abandoned. In open court the attorney for the trustees clearly and emphatically stated that the trustees

proposed to stand on their rights under that instrument.

The proposal that only a limited amount of hay be put up; that the mortgaged lands be sold, subject to the lien of the bondholders, in one parcel, at public auction about December 1st, and that such livestock as cannot be disposed of at private sale, before some fixed date, be sold under the hammer, is not one which commends itself to the Court.

The hay crop in Nevada will be unusually short this year. According to careful estimates there are 50,000 more cattle in this state than can be carried through the season on present supplies of feed, grass, hay, and hay to be cut. Similar conditions, owing to the extreme drought which prevails everywhere west of the Rocky Mountains, exist in all neighboring states. Hence, large numbers of cattle must be sold and shipped out of Nevada. These conditions will tend [16] to reduce prices, and also to enhance the value of hay. Hay is already being contracted in the stack at $20 per ton. The receiver has on hand 7,000 tons of old hay, and confidently asserts that he will be able to cut not less than 18,000 additional tons. This hay can be cut and stacked at an expense of not more than three or four dollars per ton. To refuse to cut this hay is simply to throw away values which ought to go to the creditors, and to run the risk of starving large numbers of cattle. The witnesses without exception testify that the receiver should put up all the hay possible; if not consumed, it can be sold at

a large profit. Failure to cut and stack the hay crop will spell nothing but loss and disaster.

The receiver is therefore directed to put up all the hay on the lands in his possession which can, in his judgment, considering the present prices of hay and the probability of a severe winter and the shortage of feed, be profitably cut and stacked.

All witnesses have testified that the liquidation ought to proceed in an orderly manner, and that the property should be sold as a unit, or in separate units, as far as possible, in order to preserve the value inhering in the property as a going concern. They also testify that much better results can be obtained by selling the livestock and the lands together, than by selling them separately; and that private sales are to be preferred to public auction.

The receiver should at once endeavor to sell each ranch or each parcel of ranch land, with its farming equipment, livestock, spring, summer and fall range, as a unit, and as a going concern.

It is not considered that the present supply of feed, including the 18,000 tons of hay which can be put up, will be sufficient to carry all the company's livestock. The receiver must therefore prepare for speedy disposal, or removal [17] to other pastures, and thereafter sell at the earliest practicable date all livestock which will bring the market price, or a reasonable one, in so far as it is, in his judgment, advisable to do so, provided that he should not, without the consent of the First Federal Trust Company, or further order of the Court, make sales which will reduce the number of livestock below the

limit fixed in the trust deed. The receiver has been given abundant assurance that the Trust Company will co-operate with him in any just and equitable method of closing this receivership, and disposing of the property. There is in my opinion no necessity for further litigation with that corporation, and all occasion therefor should be studiously avoided.

It is unwise to fix any date when the properties remaining in the hands of the receiver must be sold at public auction. With a property so large and herds so numerous, the natural effect of such an order will be to check private sales and depress prices. It will be sufficient to order such sale when the necessity arises. All the testimony without exception, shows there is no demand for stock cattle at the present time, and that no one wants such cattle unless he has, or knows where he can obtain, feed and hay for them during the coming winter. Cattle are of no use as beef until properly fattened for the market. At the end of a dry season like the present, cattle cannot be expected to come off the ranges in marketable condition. They must be fed before they can be sold as beef, and this the receiver is better prepared to do than stockraisers in general. The demand for stock cattle is in the spring, in March, April and May when there is grass on the ranges. The wool and the lamb crop come in the spring. Hence the unwisdom of forcing all this property on the market at once is apparent. That it is unwise is the judgment of every witness

testifying as to how the property can be most advantageously disposed of. [18]

Much must be left to the judgment of the receiver, and he is hereby directed and authorized to proceed diligently to sell the property of the Union Land & Cattle Company in his hands in accordance with his best judgment, at current prices as far as possible, and as soon as there is a market for the whole or any portion thereof, having due regard at all times to the effect of each sale on the salability and maintenance of remaining assets. When satisfactory sales cannot otherwise be effected, he may sell the property on such terms as he may deem best for the interest of all parties, provided that he shall not sell upon a longer credit than three years from the time of sale; and in all such cases he must retain ample and unquestionable security for deferred payments.

Koontz vs. Northern Bank, 16 Wall. 196.

He is also authorized to take such measures as in his judgment may be necessary to advertise the property for sale, and to procure purchasers therefor.

The following disbursements, to wit, $7,500 to Brown & Belford and $24,000 to W. T. Smith, are hereby allowed and approved as payments on account.

This order is not to be regarded as fixing any specific rate of compensation.

The receiver is also authorized to pay to R. M. Lesher $4,241.33 as the final payment on contract for the Lesher land; and the previous payments of

$1,000, $1,000 and $4,241.30 in the same transaction are confirmed and approved. [19]

[Endorsed]: No. B–11. In the District Court of the United States, in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land & Cattle Company, a Corporation, Defendant. Opinion. Filed August 4th, 1924. E. O. Patterson, Clerk. [20]

In the District Court of the United States, in and for the District of Nevada.

No. B–11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation,

Defendant.

ORDER AUTHORIZING PAYMENT OF ATTORNEYS' COMPENSATION.

This matter coming on to be heard this 19th day of June, 1924, upon the petition of W. T. Smith, receiver of Union Land and Cattle Company, for instructions and directions as to the liquidation of the property and assets of said Union Land and Cattle Company in his possession as such receiver, and it appearing to the Court that due notice of

said petition had been published and served upon the parties to the above-entitled suit and upon all creditors of said Union Land and Cattle Company, and that said petition had been duly served upon the parties to said suit, and the said receiver appearing by Brown & Belford, J. W. Dorsey and W. E. Cashman, his attorneys, the said Union Land and Cattle Company appearing by J. W. Dorsey and W. E. Cashman, its attorneys, First Federal Trust Company appearing by Jones & Dall, its attorneys, the following creditors; W. T. Hitt, Emma McLaughlin, Henrietta Moffat, Maude B. Clemons, Francis C. Rickey, W. A. Dill, W. H. Frazer, Elizabeth Sharp, Mrs. Aloysius Davey and J. W. Dorsey appearing by J. W. Dorsey and W. E. Cashman, their attorneys, Silveria Garat, a creditor, appearing by Fred L. Dreher, her attorney; the following creditors: Old Colony Trust Company, The First National Bank of Boston, [21] National Bank of Commerce in New York, the First National Bank in St. Louis, National Shawmut Bank of Boston, National City Bank, and First National Bank of Chicago, appearing by McCutchen, Olney, Mannon & Greene, their attorneys; and it further appearing to the Court that said Old Colony Trust Company, The First National Bank of Boston, National Bank of Commerce in New York, The First National Bank in St. Louis, National Shawmut Bank of Boston, National City Bank, and First National Bank of Chicago, had filed an answer and cross-petition to the petition of said receiver, and that said Union Land and Cattle Company and W. T. Hitt,

Emma McLaughlin, Henrietta Moffat, Maud B. Clemmons, Francis C. Rickey, W. A. Dill, W. H. Frazer, Elizabeth Sharp, Mrs Aloysius Davey and J. W. Dorsey and said receiver, W. T. Smith, had filed an answer to said cross-petition of said banks in opposition to the relief prayed for in said answer and cross-petition of said banks and said petition of said receiver, W. T. Smith, being called for hearing by said court on said day, and having been heard upon the pleadings filed in said proceeding and upon the evidence offered by said receiver and by said individual creditors and said Union Land and Cattle Company, and upon the testimony of the witnesses for said parties, and the matter having been duly submitted to the court on the 20th day of June, 1924, and the Court now being fully advised in the premises;

IT IS ORDERED that W. T. Smith, receiver of the Union Land and Cattle Company, shall proceed forthwith and as speedily as may be to sell and dispose of the property and assets of said Union Land and Cattle Company; that such sales shall be made in accordance with his best judgment and for the best terms obtainable by him; that he is hereby authorized and directed to negotiate for such sales with such purchasers as he may be able [22] to procure, and to make and execute contracts for such sales with such purchasers, and to deliver to such purchasers any and all property purchased by them pursuant to such sales and contracts.

IT IS FURTHER ORDERED that the said W. T. Smith, as such Receiver, shall be and he hereby

is authorized to take such measures as in his judgment may be necessary to facilitate the sale and disposition of such property, and to cause advertisements to be published of such sales wherever deemed necessary by him.

The said W. T. Smith, as such receiver, is further directed to take such measures as may be necessary to secure the payment to him as receiver of all accounts that may be due to said Union Land and Cattle Company from the Antelope Valley Land & Cattle Company, a corporation of the State of California, and further to collect for said Union Land and Cattle Company any indebtedness that may be due to it from any other person, company or corporation.

The said W. T. Smith, as receiver, in the sale and disposition of such property and assets, is advised to proceed with such liquidation so as to sell whenever it shall be practicable, land and livestock together rather than separately, as going concerns, and in such units, divisions, subdivisions or parcels as may be desired by purchasers; and further, if sales may be made in this manner, the said W. T. Smith, as receiver, is hereby expressly authorized to take such measures as may be necessary to constitute or form from the property of said Union Land and Cattle Company such units, divisions, subdivisions or parcels as may be agreed upon between the said W. T. Smith and any purchaser or purchasers.

In the sale, liquidation and disposition of said property [23] and assets, the said W. T. Smith,

as such receiver, is expressly directed not to commit any act which may constitute an event of default as defined in that certain deed of trust executed by the Union Land and Cattle Company to said First Federal Trust Company and Milton R. Clark, as Trustees, on September 1, 1916, and that until the further order of the court, such liquidation shall proceed subject to the provisions of said deed of trust; that is to say, the receiver shall not sell, without the consent of the trustees named in said deed of trust, cattle or sheep in numbers that will reduce the number of cattle upon said lands to less than 25,000 not less than one year old, or the number of sheep upon said lands to less than 25,000. When during the liquidation of the property and assets of said Union Land and Cattle Company, the receiver shall have sold all cattle, except 25,000 head not less than one year old, and all sheep except 25,000 head, he shall immediately report such fact to this court, and apply for further instructions concerning the subsequent liquidation of such property and assets.

The said W. T. Smith, as such receiver, is further ordered and directed, in case sales of real property are made, to negotiate with said First Federal Trust Company and Milton R. Clark, Trustees, for any release or releases which it may be necessary to secure in order to effect sales of any real or other property which is subject to the lien of that certain deed of trust hereinabove referred to. This order also applies to the sale of the capital stock of the Antelope Valley Land & Cattle Company covered by said trust deed.

The said W. T. Smith, as such receiver, is further ordered and directed to harvest, cut and stack such hay as may be produced from the lands in his possession, and to use the same in feeding and properly providing for the livestock during such liquidation. If it shall be found that there is a deficiency [24] of such hay to properly care for such livestock until the liquidation thereof shall be completed, then the said W. T. Smith is directed to apply for instructions to this court with regard to all purchases of additional hay; and the said W. T. Smith is hereby authorized and directed to sell any surplus of such hay that may remain subsequent to the time of such sales of such livestock for the best terms obtainable therefor.

The said W. T. Smith, as such receiver, is hereby ordered and directed to proceed, without unnecessary delay, in the sale and liquidation of the property and assets of the McKissick Cattle Company, a corporation of the State of Nevada, subject to the provisions of any mortgage existing upon any of its property, and such receiver is advised in such liquidation to endeavor: (1) To sell and dispose of all the capital stock of said company, if purchasers can be found therefor; (2) To sell the property of said company as a going concern, land and livestock together and as a unit; (3) To sell and dispose of said property, land and livestock together, in such subdivisions as may be desired; (4) To sell and dispose of land or livestock as the same may be salable to any purchaser. The directions and advice hereinabove given shall not be deemed or construed by the

said receiver to authorize any departure by him from the terms of the option to purchase heretofore executed to M. R. Keiffer, and now outstanding.

The said W. T. Smith, as such receiver, in the sale of beef cattle, is hereby directed and ordered to proceed with such sales as rapidly as such cattle can be prepared for market and in as large lots as are possible to be prepared. While such sales may be made by him in accordance with his best judgment, current market prices for the numbers of said cattle which may be offered to the market, should when practicable be obtained. [25] The same advice is given to the receiver in the sale of sheep so far as in his judgment it may be practicable.

The receiver is further expressly authorized to sell and dispose of any or all of the property of said Union Land and Cattle Company by public sale or by public auction whenever in his judgment such sales by such methods are practicable to be made, and whenever in his judgment such sales, the element of time being considered, will or may result in better prices than may be obtained by private sales or by sales by other methods.

The said W. T. Smith, as such receiver, is hereby authorized and directed to sell and dispose of the personal property and equipment on the various ranches aud properties of said Union Land and Cattle Company in any manner deemed best by him as rapidly as such personal property and equipment may reasonably be dispensed with in the operation of such properties or ranches.

The following disbursements: $7,500 to Brown & Belford and $24,000 to W. T. Smith, are hereby allowed and approved as payments on account. This order is not to be regarded as fixing any specific rate of compensation.

The receiver is also authorized to pay to R. M. Lesher $4,241.33, as the final payment on contract for the Lesher Land; and the previous payments of $1,000, $1,000 and $4,241.30 in the same transaction are confirmed and approved. He is also directed to pay to J. W. Dorsey and W. E. Cashman $2500, for services heretofore rendered the receiver in the Circuit Court of Appeals.

E. S. FARRINGTON,
District Judge. [26]

[Endorsed]: No. B–11. In the District Court of the United States, in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land & Cattle Company, a Corporation, Defendant. Order. Filed August 4th, 1924. E. O. Patterson, Clerk. [27]

In the District Court of the United States, in and for the District of Nevada.

IN EQUITY—No. B–11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation,

Defendant;

OLD COLONY TRUST COMPANY, a Corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Interveners;

J. W. DORSEY and W. E. CASHMAN,

Applicants.

STATEMENT OF EVIDENCE.

The application of Messrs. J. W. Dorsey and W. E. Cashman for compensation as attorneys for Union Land and Cattle Company and special counsel for the receiver, and for repayment of costs and expenses, alleged to have been advanced and paid on behalf of said Union Land and Cattle Company and its creditors, came on regularly for hearing before the Honorable E. S. Farrington, Judge of the above-entitled court, on Wednesday, the 18th day of June, 1924. Upon said hearing said J. W. Dorsey and W. E. Cashman appeared *in propria persona,* and said [28] Messrs. J. W. Dorsey and W. E. Cashman also appeared for said defendant Union Land and Cattle Company; said W. T. Smith as receiver of said Union Land and Cattle Company appeared by Messrs. George S. Brown and Samuel W. Belford and by said Messrs. J. W. Dorsey and W. E. Cashman; interveners above named appeared by Messrs. McCutchen, Olney, Mannon & Greene, by A. Crawford Greene, Esq., and John F. Cassell, Esq., and by Messrs. Hoyt, Norcross, Thatcher & Woodburn, by George B. Thatcher, Esq.

Thereupon the following proceedings were had and the following testimony and evidence were presented:

TESTIMONY OF W. E. CASHMAN, FOR APPLICANTS.

Mr. W. E. CASHMAN, called as a witness for applicants, was duly sworn and testified as follows:

The WITNESS (on Direct Examination by Mr. DORSEY).—J. W. Dorsey and W. E. Cashman were employed by the Union Land and Cattle Company to represent it in this receivership matter, in the case of the First National Bank of San Francisco vs. Union Land and Cattle Company some time in May 1923. They performed services in the matter of the application of the First Federal Trust Company to sue the receiver which was filed in May of 1923. That matter occupied, I think, three different trial days in this court besides the preparation previous to the first hearing, and the preparations of necessity in between the several hearings and I think it terminated on the 9th day of July, 1923. The next matter was the application of the First Federal Trust Company for an order of this Court directing the receiver to return the properties that were covered by the trust deed to the trustees named in the trust deed [29] for the purpose of sale. That was filed some time in August, 1923. Then following that was an application made by the complainant in the action for an order for speedy liquidation. Following that an application was made by seven eastern banks for the same purpose. Those matters came on for hearing finally in October, and I think were sub-

(Testimony of W. E. Cashman.)

mitted some time during that month. Then there was an application made by the receiver for leave to purchase livestock which was filed some time in October and heard in October and determined some time in November. Following that appeals were were taken by the First Federal Trust Company, The First National Bank, and what I term the eastern banks, from the orders of the Court made denying the relief prayed for in their various petitions. Now, I have taken from my notes the days and dates, and some of the work that was done beginning with May 28, 1923, and carried down to and including April 8, 1924, which was the day following the date of the decision of the Circuit Court of Appeals. These services were all performed between May 28, 1923, down to and including April 8, 1924. hey included the examination of authorities, witnesses, various trial dates in this court, preparation of statements of evidence to be used on appeal, preparation of transcripts, the examination of authorities on the appeals, and the preparation of the briefs that were finally filed in the Circuit Court of Appeals, and the preparation for argument in that court; and practically from May 28th to July 9th, practically every day of that time was consumed in work in connection with the trial of the first case, not only with me but with yourself; we were in constant consultation and constantly at work upon the question involved in those various proceedings. It necessitated thirteen trips from San Francisco to Carson City and [30] re-

(Testimony of W. E. Cashman.)

turn. Up to the present time I paid the expenses of those trips, or advanced the money for them. The correct amount of moneys so advanced is $620.57. That was the actual outlay in carfare and hotel bills and a large part of that time we were entertained at private houses. During all of the time we had opposition in these matters, other attorneys opposing or contesting the petitions—all of the time these were strenuously contested. The first application was made by the First Federal Trust Company, McCutchen, Olney, Mannon & Greene representing petitioner at that time. On the second application that was made by the First Federal Trust Company, it was represented by Messrs. Jones & Dall. The applications of the various unsecured creditor banks were represented by McCutchen, Olney, Mannon & Greene's office, by Mr. Greene, by Judge Olney and Mr. Mannon, and Mr. Thomas was here, I believe, and Mr. Cassell. The firm of McCutchen, Olney, Greene et al. were present and litigated for one or others of the creditors in all of these applications at all of the hearings. Mr. Jones from the time that he became the attorney for the First Federal Trust Company, continued to serve it as its attorney, until the judgment or decree of the Circuit Court of Appeals. There were several attorneys of the firm of McCutchen, Olney, Mannon & Greene here at all times—at least two lawyers, and I am not sure but that on one or two occasions there were three. I may be mistaken about that. The office of Hoyt, Norcross,

(Testimony of W. E. Cashman.)

Woodburn & Henley was also present at all of these hearings and were present for the contesting banks.

Cross-examination by Mr. GREENE.

The WITNESS.—(Continuing.) On May 29th and 30th, 1923, at the inception of our engagement in this litigation, we were acting for the Union Land [31] and Cattle Company. There were various creditors we have represented for a good many years, but the contest was carried on by the Union Land and Cattle Company. The creditors which we have represented for some time are: W. T. Hitt, Frances C. Rickey, Mrs. Emma McLaughlin, Miss Henrietta Moffat, Mrs. Elizabeth Sharpe, Mr. Dorsey's claim, J. W. Davey, Mrs. Clemmons, Mr. Frasier, and Mr. Dill. We didn't represent Mr. W. H. Moffat in any capacity as a creditor. We represented his interest in connection with this litigation only as president of the corporation. Mr. Moffat had and still has a stockholding interest in this company. We represented the company since 1913, I think. Mr. Moffat had at that time a one-third interest in the company. We never represented Mr. H. G. Humphrey in this proceeding but have done so outside of this proceeding. Mr. Moffat was usually present at all the proceedings. I have occasionally reported to Mr. Humphrey what took place here. Mr. Humphrey has been partially advised of what has been going on, but not altogether so far as I know. I haven't seen Mr. Humphrey a half dozen times in the last sixteen months. We have absolutely

(Testimony of W. E. Cashman.)

no arrangement whatever for compensation either with the Union Land and Cattle Company or any or all of the creditors to whom I have just referred. There was no arrangement of any kind with reference to paying for our services. I do not mean by that that we volunteered our services on behalf of those people; but the employment was made and there was no telling to what extent we would be called upon to perform services and it was a matter left absolutely to the reasonable value of the services. I do not expect to collect from the corporation for the work that was done for them because in the first place, as far as we know, Mr. Humphrey and Mr. Moffat are without funds [32] or means of paying. Everything they had was taken and deposited or assigned for the benefit of creditors, and so remains. As far as their personal representation is concerned, I do not think that for that reason it is proper that their representation and the cost of it should be borne by the other creditors to the proceeding, but as far as the representation of the company itself is concerned, and the assets of the company, I do. I think that their personal representation compares as a very small amount with the representation we were giving to the company. I could not say how much fractionally. I will have to come to that conclusion ultimately undoubtedly. My judgment at this time is that all the service that has been rendered since May, 1923, to April 8, 1924, should be paid entirely by the company. The ser-

(Testimony of W. E. Cashman.)

vices are of importance to the creditors of the company because they have resulted in the protection of the assets for the benefit of the creditors. With the exception of $5.00, the amount which I have cited for expenditures was all expended prior to March 1, 1924; and that began with May 25, 1923. In February, 1924, Mr. Smith called up the office and requested us to prepare briefs, prepare and file briefs in the appeal as special counsel for the receiver, and I think that that was later confirmed by receipt of a certified copy of an order made by this court; I don't remember just offhand what that date was. As I recall it, it was about the middle of the month. Mr. Smith advised us that the purpose of our employment was to assist in the presentation of the appeals then pending in the Circuit Court of Appeals, that is to assist Messrs. Brown & Belford as additional counsel. I don't think there was any further discussion with reference to those briefs; I think we went right at it, to work along those lines. [33] There was some correspondence between us and Brown & Belford; I think that some of the points were discussed; that outlines of the points to be made were passed from one office to the other; independent briefs, however, were filed. The reason for filing independent briefs was that the time was short as we could not get them to Reno and back and *vice versa,* in order to have them printed and served and filed within the time in which we had to do it. We were, however, in entire accord with

(Testimony of W. E. Cashman.)

reference to the preparation of the briefs. There was no question as to matters of policy in connection with the presentation that I recall. We were in entire agreement as to the matters to be presented, but probably not always as to the method of presentation. I am quite certain of that. There was no disagreement that I recall between Messrs. Brown & Belford and ourselves as to the treatment to be given those briefs. We did not have any discussion with Brown & Belford with reference to the treatment to be given those briefs to the charges of fraud and impropriety that had been made against the First Federal Trust Company and the other parties to the litigation. That was only a matter of discussion as between us. It was never a matter of discussion as between us and Mr. Smith. What led us to vigorously support those charges when our associate counsel did not support them was that we argued our points in those matters based upon the argument of the appellants, so far as the Union Land and Cattle Company, the defendant in the action, was concerned. I do not recall that I knew that Brown & Belford were not making the charges in their briefs that were made in ours until after the brief was printed,—as to how they were to treat that particular phase of it. [34]

The COURT.—I don't know, Gentlemen, just exactly where this is going to end, but I am perfectly willing to state my reasons for making that order, if it is deemed by counsel necessary.

(Testimony of J. W. Dorsey.)

Mr. DORSEY.—I am responsible for any aspersions in that brief, I wrote that brief myself, I am fully responsible, and Mr. Cashman had nothing to do with it.

TESTIMONY OF J. W. DORSEY, FOR INTERVENING BANKS.

Mr. J. W. DORSEY, called as a witness by the intervening banks, having been duly sworn, testified as follows:

The WITNESS (on Direct Examination by Mr. GREENE).—In all the proceedings to which Mr. Cashman has referred, including those referred to in connection with my employment by the receiver, I was acting exclusively for the Union Land and Cattle Company, from the beginning of the proceedings initiated by the filing of the petition to sue the receiver until, and only until we went, just before we went into the hearing of the case on appeal. I represented, I think, [35] all the creditors in all things that I have done since I was first employed by the Union Land and Cattle Company, not only the particular creditors mentioned by us, and our own creditors, but your clients. I thought I knew I represented the First National Bank of Chicago, and I think I know I did. I think the attempt here was to destroy this institution, to sell this institution and I thought, and still think that those proceedings would have resulted, if successful on your part, in destroying the value of the property, impoverish

(Testimony of J. W. Dorsey.)

my clients, and hurt, I mean lessen the moneys that your clients would receive. I thought the course that I was taking was for the advantage of the creditors, and all of the creditors of the Union Land and Cattle Company. I was representing the company which owed these obligations to the creditors, and I acted in behalf of all the creditors, if that is what you mean. I was really employed by and acted for the company, and in the interest of the creditors, and that is the only interest I have. Let me make a preliminary statement. Perhaps I was a bit hasty this morning in saying in the weakness of the moment that at this hearing I was representing the receiver. I want to say what I have done in behalf of the receiver, or in that interest, was done because it was to the advantage of the Union Land and Cattle Company to have it done; I was called to render that assistance, and I want nothing for it, and my bill does not include that, I want no pay for that. I want no pay for anything done in the interest of the receiver as such; so that this claim does not include any services rendered to the receiver, either in this court or the appellate court, or in this proceeding. Therefore, my claim is made for work done wholly in the interest of the Union Land and Cattle [36] Company, incidentally and of course primarily in the interest of its creditors. No claim has been fixed. I want, if the Court thinks it proper, a reasonable compensation for services rendered. I was opposed by a number of rather

(Testimony of J. W. Dorsey.)

eminent and very able gentlemen and I had a great deal of work to do, at least to me it was. The most of the time for months was spent in matters concerning these petitions; we devoted a great deal of our time to it; had much difficulty and we never got more than over one trouble when we were plunged into another. I have no suggestion to make to his Honor as to what I should receive. I intend to call you on the witness-stand and ask you what service of that kind is worth. I am willing to submit it just that way. [37]

Mr. DORSEY.—I don't think I said we don't expect to get money out of the hands of the receiver. I certainly expect in the protection of the property for the benefit of creditors to be paid, as a laborer would be paid, or a man who saved your house from destruction, or saved your property from ruin; it is rendering a service in the interest of creditors.

Mr. GREENE.—I think that is all, Mr. Dorsey.

The COURT.—I don't know that I should let the matter rest as Mr. Dorsey puts it. I thought Mr. Dorsey rendered a real service to the receivership and to the Court, and in the appellate court, for which he should be paid.

Mr. GREENE.—If that is the case I think we ought to have the explanation, and I ask for it.

Mr. DORSEY.—Unless it is necessary I can't see what possible use it will be.

The COURT.—It is going to be unpleasant. You say it is a reflection on you. Now some things

(Testimony of J. W. Dorsey.)

have occurred here with your firm which I didn't particularly admire; and I think if you want to hear it we will have it in chambers, it is not a matter that needs publication.

Mr. DORSEY.—I don't think that they are entitled to it, if your Honor please. We have no charge, and didn't intend to have any against the receiver, and the petition does not ask for anything as services in behalf of the receiver; we have asked for compensation, it is out of his hands, but it comes out of the property that belongs to this company.

Mr. GREENE.—Colonel Dorsey, in your petition you ask for compensation on account of services rendered to the receiver, unless I am very much mistaken. [38]

Mr. DORSEY.—Well, maybe that is so, I don't remember. If it is so, I withdraw it. Professional services rendered, and as special counsel for the receiver; I move that be stricken out; I withdraw that statement. I think I put that in myself. If your Honor is ready to proceed we will call a witness.

TESTIMONY OF M. R. JONES, FOR APPLICANTS.

Mr. M. R. JONES, witness called by applicants, being first duly sworn, testified as follows:

WITNESS (on Direct Examination by Mr. DORSEY.—I have represented the First Federal

(Testimony of M. R. Jones.)

Trust Company and Mr. Milton R. Clark, Trustees, from the time a petition for leave to intervene and sell the properties in the possession of the receiver was filed in this court and case on August 25, 1923. I have been present in a number of those hearings when these petitions were heard and I took part in the matters relating to the appeal. I prepared a brief myself and read the brief prepared by Mr. Cashman and Mr. Dorsey. In the preparation, or in the agreements which resulted in the transcript as filed, we had a number of interviews. I know generally the character of services that were performed in reference to the First Federal Trust Company matters and such matters as I saw in this court when I was here. I know generally what was done by myself and I saw and know generally what was done by other counsel so far as it related to the deed of trust. As to the other matters there were hearings here, I think, running over a week or two weeks following my petition and I was not present.

Q. Omitting those, and considering that the work was done that you know something of, that you were a part of, what in your judgment is a reasonable compensation for those services?

Mr. GREENE.—I object, your Honor, and the ground of my objection [39] is this, that under no conceivable set of circumstances can counsel for the defendant company be entitled to compensation out of the receivership fund, and that this examination is entirely immaterial and irrelevant.

(Testimony of M. R. Jones.)

The COURT.—Objection overruled.

Counsel for the interveners thereupon excepted to the said ruling of the Court overruling said objection and hereby assign said ruling as Interveners Exception No. 1.

WITNESS.—Can you give me in addition to that any number of days that we were here, or number of days you spent on the preparation of your briefs?

Mr. DORSEY.—Can you, Mr. Cashman? Mr. Cashman has here a list of service and work performed, I kept no journal entries. The preparation of the brief on appeal was constant from the beginning; we argued in March; and beginning on the 10th day of March, or about that time, to the time of the argument, or the time of the filing of the brief, the preparation for these various things I would say ran through and occupied several months. From September the 18th, 1923, until the 20th day of October, 1923, the service was daily.

WITNESS.—Will you let me see the record. (The paper is handed to the witness.) Will your Honor permit me to look at this a moment.

The COURT.—Certainly.

Mr. CASHMAN.—Those notes do not give in detail all that was done, they are simply memoranda dictated at the end of a day to the stenographer for reference.

Mr. DORSEY.—And no notes by me.

Mr. CASHMAN.—None by Mr. Dorsey. [40]

A. Taking into consideration—so you will know

(Testimony of M. R. Jones.)

on what I base my answer—in charging a fee I take into consideration, first the amount of work done; second, the amount involved, and third, the success or real service to my client. I am assuming in answering your question, that I am to take into consideration the fact that you were here the four trial days, so far as the First Federal Trust Company's matter was concerned, and I think I must necessarily confine my answer to what I know about it, as you have eliminated some of the work done for the receiver.

Mr. DORSEY.—I did nothing for the receiver that I didn't do for the company; I did it all for the company.

A. Four days on the first petition, probably that many more on the second petition; I know you made an examination of the proposed statement on trial, proposed statement of evidence on the appeal of the First Federal Trust Company; and I assume that there was another statement of approximately the same size from the First National Bank's appeal; and I think a very small statement on the appeal from the order allowing the receiver to issue certificates; and that you wrote a brief of probably a hundred pages during that time on both of the appeals. Is that about correct?

Mr. CASHMAN.—Larger than that.

A. Well, those are approximate.

Mr. DORSEY.—One hundred seven pages in one, I have forgotten the other; and a brief in each appeal. Just a moment, and we will give you ex-

(Testimony of M. R. Jones.)

actly the number of pages, but I didn't charge by the page. In appeal number 4194, the one in which you were interested, there were 111 pages; appeal number 4195, there are 42 pages; and appeal 4196, there are 34 pages.

A. I am lacking in one element in what I take into consideration when I make an estimate; I can't take into consideration [41] the real value to your client; your views and my views as to the value of the service to your client differ.

Q. What we were opposing, you recall, was turning over the properties to the First Federal Trust Company; and they were not turned over to the First Federal Trust Company; we don't differ as to that.

A. We differ as to whether that should have been done.

Q. Yes.

A. So that element I can't consider. From the work that I think was done, I think that work ought to be fairly worth somewhere between three and five thousand dollars.

Q. Mr. Cashman's and mine too; the work done by Mr. Cashman too?

A. I can't segregate the two of you.

Q. You think that is what the service is worth?

A. Yes; I do not take into consideration the element of success, because you and I differ as to that, as to whether that should be taken into consideration.

TESTIMONY OF A. CRAWFORD GREENE, FOR APPLICANT.

Mr. A. CRAWFORD GREENE, called as a witness for the applicant, having been duly sworn, testified as follows:

The WITNESS (on Direct Examination by Mr. DORSEY.)—I am familiar with all of the proceedings on these various petitions, the trials of them and appeals from them, the work that was done generally in the case by my firm, by Hoyt, Norcross, Thatcher, Woodburn & Henley, by Jones & Dall, and by Cashman and Dorsey; I have a general view of the situation as a lawyer.

Q. Mr. Greene, what would you charge your client for those services that were performed on behalf of the Union Land and [42] Cattle Company, assuming that we did no work for any other person or corporation?

Mr. THATCHER.—We make the same objection as heretofore made to testimony of the same kind.

The COURT.—The same ruling.

Mr. THATCHER.—And upon the further ground, we would like to add, that it is a matter of private contract between the Union Land and Cattle Company and their attorney, and not a matter for determination by this court in this proceeding.

The COURT.—Well, that objection is good if the first one is good; and if the first one is bad that one is bad, so they are both involved in the same thing, and it will be the same ruling.

(Testimony of A. Crawford Greene.)

Counsel for interveners thereupon excepted to the said ruling in the court and hereby assign said ruling as Interveners' Exception No. 2.

The WITNESS.—(Continuing.) I think, Colonel Dorsey, that your service was of value to two people only, so far as I know, and they were W. H. Moffat and H. G. Humphrey. The reason I am proceeding as a I am is because I want you to get clearly my point of view and the probable reason my advice on this subject is not going to be of very much value to you. I think you have performed a valuable service from the point of view of H. G. Humphrey and W. H. Moffat, in the point of view of delay. You have delayed—you and others—the liquidation of this property; but as far as the point of view of the creditors of the Union Land and Cattle Company as a whole, I think you have done them a positive damage; and I think when the end of the road is reached, they are going to appreciate the losses they have been subjected to. With reference to compensation, [43] if I were going to fix your compensation—I don't know what time you put on it, other than court appearances.

The COURT.—Mr. Greene, your opinion may be that this work done by the attorneys was a positive detriment, and that the only proper thing was for your requests to have been granted, and the property turned over to the First Federal Trust Company. This court was unwise enough to disagree with you on that, and it rather looks as though another court has been equally unwise; it seems to

(Testimony of A. Crawford Greene.)

me that it is out of the question now. The question is how much these services are worth, that is all, as services. I don't think it is necessary to criticize the court, this court or the other, or to criticize the attorneys who prevailed on certain motions.

A. There is no criticism.

The COURT.—It is a question as to what the services are worth.

The WITNESS.—(Continuing.) I have been asked as I understand the question to fix, or to suggest a fee for particular services; my only experience with those with whom I have been associated, is that a fee must largely be determined by the success of the service rendered; its advisability and propriety; and in fixing a fee, I cannot fix it without reference to those facts. I was going to proceed to say to Colonel Dorsey, if he would give me a list of the dates on which a complete day's service had been given to his client, it becomes a very simple matter, from my basis of computation as to what he should receive as a per diem remuneration; but I don't think the service has resulted in a success which warrants much more than that from his point of view. [44]

Mr. DORSEY.—(Q.) Supposing it occupied throughout the time we have been employed, four months?

A. Well, that would depend very largely on what your basis of compensation is; on a per diem basis, that varies all the way, as you know, from fifty to

(Testimony of A. Crawford Greene.)

five hundred dollars a day; and your past experience would be a better indication to you as to what you should receive for your services than any guess I could make as to what your services were worth.

Q. Do you care to say what those services were worth, in your judgment?

A. Services to the Union Land & Cattle Company?

Q. Yes.

A. Give me the length of time that has gone in on it.

Q. Exceeding four months constant time.

A. Well, I should think four months of your time, Colonel, ought to be worth the figures that Mr. Jones gave.

Mr. DORSEY.—That is our case. I would like to dispose of my case, if your Honor please, just this way: So far as this matter of compensation is concerned, it is a valuable thing to consider; that is what I am working at, my profession, and fees or compensation for services. If I get nothing I will not be discontented; I may not be entirely satisfied, but I will not be discontented. As to the propriety of charging these fees to the receiver, or against the funds in the hands of the receiver, there is not, I think the slightest conflict of authority. Every service rendered in behalf of property, for the benefit of the property, for its protection, service that is rendered by a man who sues the receiver, and protects property that belongs in equity to the creditors, one who defends a suit, one

who prevents dissipation of that property, aids all of the creditors, and is entitled to compensation from the funds of the creditors would not [45] otherwise get; he is conserving those funds and protecting the properties they are ultimately entitled to when converted into money. There is no conflict of authority on that notwithstanding what has been said. I find the courts have universally held even where a man injects himself into a case, if it subsequently appears it was for the benefit of the receiver, or for the benefit of the receivership funds, he is allowed his expenses, and allowed reasonable compensation for his services. That is all I ask. And I am not doing this for the receiver as such; I am not doing it for Mr. Moffat; what service I performed for Mr. Moffat as an individual was finished before I was employed by this company; I am glad, and I hope it will rebound to his benefit, and I am certain it will if we continue to prevail, I am certain he will receive more out of it, and I am certain the creditors will get more out of it if we do finally prevail; and I am positive the law is that that fund is responsible. Under the circumstances brought about, I am satisfied if some one had not represented this company at the time it was attacked, inevitably it would have gone into a speedy sale, which would have been a disastrous one; if somebody hadn't done it this property woud have been sacrificed. If somebody doesn't do it now, doesn't continue this, it will be sacrificed. When these gentlemen first came here, your Honor will

recall that they spoke with a great deal of elation and pride of the fact that they represented 85 per cent of the creditors. That representation subsequently dropped out the First Federal Trust Company; now they have left them about fifty, or less than fifty per cent; and if we can continue this until times are better, they won't represent ten per cent. And every man who is benefited and protected by saving this property will be willing to contribute his mite toward the payment of services [46] rendered. If the gentlemen think there are no authorities on that, I will call their attention to a good many in a very short time. Let me say one other thing I omitted to say. The Court itself is better informed than any witness that can be put upon the stand saving the man himself, who is prejudiced, who is biased in his own favor, to wit, the man who performed the service. The Court saw what was done; the Court sits as a conservator of these properties, and it is to the interest of the Court to see that the creditors are paid the utmost that can be obtained for them; the Court knows whether the services rendered were beneficial or not, at least it knows the amount of labor performed; and the Court can say I don't care to hear testimony, and fix the fee; that has also been decided by the courts.

The hearing was thereupon continued to Thursday, June 19, 1924, at 10 A. M., at which time it was resumed. [47]

TESTIMONY OF J. W. DORSEY, FOR INTERVENERS.

Mr. J. W. DORSEY, the witness, having been called to the stand by interveners, testified as follows:

Direct Examination by Mr. GREENE.

I appeared at numerous hearings in connection with this matter, those being the hearings referred to by me yesterday in the course of my examination. My answers and pleadings in the case will disclose the names of my clients. I was appearing for the same parties throughout the proceeding and there was no change in my representation until I was advised to act with the attorneys for the receiver, to appear for the receiver.

Q. And when occasion has arisen for you to state the parties for whom you were appearing, it goes without saying that statement is correct. I call your attention to the transcript of October 12th, at page 204. I can identify it, and save time perhaps, by saying that I read from page 204 of the transcript dated October 10th, 11th and 12th, 1923. (Reads:)

> "Mr. MANNON.—If your Honor please, before proceeding to do that, and on behalf of the various bank creditors whose indebtedness aggregates some twenty-two hundred thousand dollars [48] without interest, for whom myself and associates and Mr. Henley and his associates appear, I desire to consent formally to the

(Testimony of J. W. Dorsey.)

granting of the application of the First Federal Trust Company.

"Mr. DORSEY.—Now, if your Honor please, on behalf of the creditors, local creditors, whose claims aggregate $100,000 or more, and in behalf of myself, a creditor of the company, I oppose and object to the granting of this petition."

At the time that statement was made by you, Mr. Dorsey, you were acting, I take it, in behalf of the local creditors to whom that statement refers?

The WITNESS.—(Continuing.) Well, I was—I had been, and still am, employed by a number of those creditors; indirectly I have represented all of them. I had many discussions with them, and was authorized, both to speak for them and to act for them in their interests. I have acted for them in the sense that I have just stated. I am acting for them, but without direct employment; none of them have employed me at a fee or for compensation. My firm has been paid on account of that service not one cent by anybody on earth. Whether it is intended that the compensation which I am requesting here shall cover the services rendered by me throughout this proceeding depends on circumstances; I don't know yet what will happen; I have never said I will charge; never said I will not charge anyone else for services in connection with these matters. I performed a good deal of service long before I became attorney for the company, for which I may charge nothing. Whether an allow-

(Testimony of J. W. Dorsey.)

ance is made to me by the Court here will have nothing to do with it; it depends on how this matter terminates; if the affairs are wrecked, and their losses are complete, I shall charge nothing; if I succeed in [49] saving for them a large amount of the money they had invested here, I probably will charge something; that is a matter I have not yet determined.

Q. I show you, Mr. Dorsey, a letter, and ask you whether that letter was prepared under your direction, or sent with your approval? (Hands letter to witness.)

A. I think I never saw it; I think I had nothing to do with it; I think I never had any special discussion with anyone concerning its contents. I may be mistaken.

Q. The letter was never discussed with me, Colonel? A. This letter?

Q. Yes.

A. I think not. I don't recall; nothing here appears familiar. I did discuss with you some amendments to be made to the creditors' agreement of January 15th, I think, 1923, looking to a representation by a committee, Mr. Wingfield and Mr. Smith being that committee, and looking after the interests of the local creditors; to that extent I discussed it with you.

Q. In the letter which I show you, which is a letter addressed by W. H. Moffat to George Wingfield and W. T. Smith, dated Reno, Nevada, May 8th, 1923, this paragraph is contained: "These legal

(Testimony of J. W. Dorsey.)

services," referring to services performed by other than counsel for the receiver, "are said to have been performed during a time when the affairs of the company were in the hands of a receiver who was represented by a capable attorney, which attorney could and should have represented the company in its affairs and all legal matters affecting the company; and consequently all legal services performed by attorneys employed by creditors or outside parties should be paid for by the employers of such attorneys, rather than being made a charge against the company." [50] You don't remember, Colonel Dorsey, any discussion with me with reference to that paragraph, or the principle of law to which that paragraph applies?

A. I do not. If you recall some occasion, what we were discussing, it may be that something is familiar, but that is new to me.

The WITNESS.—(Continuing.) There are no circumstances in connection with my employment; I was simply asked to represent the company. With reference to the circumstances of my employment by the receiver, there were no other circumstances other than that I had been acting for the company here, I was familiar with the affairs of the company, and I assume that the Court thought perhaps I would be of some assistance, some aid to the attorneys for the receiver. I had no thought of representing the receiver as such until shortly—until after, well, I think it was after we had about concluded my brief, or our briefs; I think Mr. Cash-

(Testimony of J. W. Dorsey.)

man prepared two briefs in that case, and I one. I prepared the brief in appeal No. 4194—for that brief I am exclusively and wholly and entirely responsible. Mr. Cashman prepared the other two briefs. I don't remember when I was first employed by the receiver; I think it was some time during the month of March; I am confident of that but Mr. Cashman probably has a date in mind, or approximate date much better than I have. I was authorized by the Court to appear as attorney for the receiver. I was so authorized by an order of the Court; I had been informed prior to that time that my services would be acceptable. I was so informed by the receiver. It was not at a conference at all; it was concerning this matter. It was in my office, and we were talking generally about the affairs of this company. I haven't the faintest idea [51] what was said by me to the receiver at that time; I don't remember when it was; I don't remember what Mr. Smith said, or what I said; it is extremely probable I said that the receiver was represented by competent, capable men, and that maybe my services would be of no value, that probably my duty was to represent the company, and our interests in those respects were identical; both were trying to preserve the property for the benefit of the creditors. I remember at least that I did have a talk with Mr. Smith. At that talk the subject of my representation of the receiver was introduced—it was a formal introduction, I think probably Mr. Smith mentioned it. I did not seek it, and I cer-

(Testimony of J. W. Dorsey.)

tainly did not ask Mr. Smith if I might be made attorney for the receiver, one of the attorneys for the receiver. I am confident that Mr. Smith said to me that my services would be acceptable, or perhaps desirable. I didn't understand that Mr. Smith had any power to act for the receiver, I understood —he intimated to me that the Court would approve of my aiding and assisting the receiver in the preparation of briefs and the argument of the case before the Court of Appeals. Mr. Smith indicated to me that the Court would approve my employment as counsel for the receiver in those specific matters and asked whether I would accept the employment —I think it went as far as that. I don't know whether I said I would accept or not; it is entirely probable I said—Mr. Smith will recall better than I—that additional counsel might not be required, because I was representing an interest identical with that of the receiver. When I said that additional counsel might not be required, Mr. Smith did not assign any other reason in the world why one was required, that I can now recall, than that the court would like to have the benefit of my services, because I was familiar with the affair beginning [52] with the filing by the First Federal Trust Company of a petition for leave to sue the receiver and from that time on, I have been familiar with the questions that were at issue. In connection with these appeals, I was to give help along all lines which were involved in the appeals. I did not have any discussion with the receiver, or with anyone else, with

(Testimony of J. W. Dorsey.)

reference to the method of presenting these appeals. I presented them as I thought best. As to whether I had any discussion whatever with reference to the presentation of the charges of fraud and impropriety that had been made in the opinion of Judge Farrington—if you mean by discussion that I stated to him that I would make such charges, I did; Mr. Smith, however, did not ask me to, nor encourage me in doing it; that I did, and did because I thought it was proper to do it. I told Mr. Smith as I now tell you that I would make those charges and it is not improbable that I showed him some memoranda that I had made and some other matter I had written. I did not make the making of those charges a condition of my employment at the time. They were not in any way referred to in connection with my employment. During those discussions we discussed the Court's opinion frequently, and I approved it heartily, and expressed that view to Mr. Smith. I cannot tell you what Mr. Smith understood as to whether my brief would be prepared in support of the charges made in the opinion. I did not tell Mr. Smith what I would do. I had some interruptions because I had my other business affairs to care for and I worked just as hard as I know how to work to get this thing in order and I am sorry that I could not have done a better job. I did not commence my work upon any particular thing that I know of; this matter was brought to my attention that the company should be represented and I don't know whether [53] it was a

(Testimony of J. W. Dorsey.)

discussion with Mr. Cashman or whether I said so to Mr. Smith or whether Mr. Smith said so to me, that the company should appear in those two appeals. I don't know how the question arose. The orders in connection with this proceeding had not yet been made as I understand when those appeals were taken; and I think the order will speak for itself.

Q. I call your attention, Mr. Dorsey, to an order certified to by Mr. Patterson, dated March 17th, 1924, from which I read as follows: "The receiver herein is authorized to employ such additional legal assistance as he may think necessary, connected with the three appeal cases, to wit, No. 4194, No. 4195 and No. 4196, pending in the United States Circuit Court of Appeals for the Ninth Circuit, in which he as receiver is now interested as the appellee. Have you ever heard of that order?

A. I think I have; and it is probable that order that brought about the first discussion or suggestion by Mr. Smith to me that my services would be acceptable.

Q. Did you ever hear of another order dated March 26th, 1924: (Reads:) "J. W. Dorsey and W. E. Cashman are hereby appointed additional counsel for the receiver in the following cases now pending in the Circuit Court of Appeals of the United States for the Ninth Circuit, with full authority to represent the receiver therein, to wit," and so forth. I won't read the rest of it because I am going to introduce this. Numbers 4194, 4195 and 4196. Are you cognizant of those orders?

(Testimony of J. W. Dorsey.)

A. What is the date of that order, Mr. Greene?

Q. March 26th, 1924.

A. I think that is the order that I saw, and the order that came to me, or a certified copy of it.

Q. Did you request any orders of that sort should be made? [54]

A. I did not.

Mr. GREENE.—I will offer those two certified copies in evidence, if your Honor please, and ask that they be given appropriate exhibit numbers.

The COURT.—They will be admitted.

Mr. GREENE.—That is all.

The COURT.—(Q.) Did you send me a copy of your brief, Mr. Dorsey, before the last order was made, do you remember?

A. I did not. I sent you a part of my brief, but I don't remember whether I had concluded that brief before I had an opportunity to send it to you or not.

Q. You sent me a part of your brief before the second order was made?

A. Yes, sir, I did that, and I made some corrections subsequently.

The COURT.—That is all.

The order dated March 17th, 1924, is marked Creditors' Exhibit "A"; the order dated March 26th, 1924, is marked Creditors' Exhibit "B"; and read as follows:

CREDITOR'S EXHIBIT "A."

In the District Court of the United States, in and for the District of Nevada.

No. B–11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation,

Defendant.

The receiver herein is authorized to employ such additional legal assistance as he may think necessary, connected with [55] the three appeal cases, to wit, No. 4194, No. 4195 and No. 4196, pending in the United States Circuit Court of Appeals for the Ninth Circuit, in which he as receiver is now interested as the appellee.

E. S. FARRINGTON,
District Judge.

Dated March 17th, 1924.

[Endorsed]: No. B–11. In the District Court of the United States, in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant. Order Authorizing Receiver to Employ Additional Legal Assistance. Filed March 17th, 1924. E. O. Patterson, Clerk.

CREDITOR'S EXHIBIT "B."

In the District Court of the United States, in and for the District of Nevada.

IN EQUITY—No. B–11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation,

Defendant.

J. W. Dorsey and W. E. Cashman are hereby appointed additional counsel for the receiver in the following cases now pending in the Circuit Court of Appeals of the United States for the Ninth Circuit, with full authority to represent the receiver therein, to wit:

First Federal Trust Company (a Corporation), and Milton R. Clark, as trustee under and by virtue of that certain deed of trust or [56] indenture dated, September 1, 1916, executed by Union Land and Cattle Company (a corporation), to First Federal Trust Company (a corporation), and Milton R. Clark, trustees, Appellants, vs. The First National Bank of San Francisco (a corporation), and Union Land and Cattle Company (a corporation), and W. T. Smith, receiver of said Union Land and Cattle Company (a corporation),

under and by virtue of that certain order given and made on July 28, 1920, Appellees, No. 4194.

The First National Bank of San Francisco, a corporation, Appellant, vs. Union Land and Cattle Company, a corporation, and W. T. Smith, Receiver of said Union Land and Cattle Company, under and by virtue of that certain order given and made on July 28, 1920, Appellees, and Old Colony Trust Company, a corporation, The First National Bank of Boston, a National Banking Association, National Bank of Commerce in New York, a national banking association, The First National Bank in St. Louis, a national banking association, National Shawmut Bank of Boston, a national banking association, and First National Bank of Chicago, a national banking association, Appellants, vs. Union Land and Cattle Company, a corporation, and W. T. Smith, Receiver of said Union Land and Cattle Company, under and by virtue of that certain order given and made on July 28, 1920, Appellees, No. 4195.

The First National Bank of San Francisco, a corporation, Old Colony Trust Company, a corporation, the First National Bank of Boston, a national banking association, National Bank of Commerce in New York, a national banking association, The First National Bank in St. Louis, a national banking association, National Shawmut Bank of Boston, a national banking association, National City Bank, a national banking association, and First National Bank of Chicago, a national banking association, Appellants, vs. W. T. Smith, Receiver

of the Union Land and Cattle Company, a corporation, under and by virtue of that certain order given and made on July 28, 1920, Appellee. No. 4196.

Dated this 26th day of March, 1924.

E. S. FARRINGTON,
District Judge.

[Endorsed]: No. B–11. U. S. District Court, District of Nevada. The First National Bank of San Francisco, a Corporation, Plaintiff, vs. Union Land and Cattle Company, a Corporation, Defendant. Order Appointing Additional Counsel. Filed March 26, 1924. E. O. Patterson, Clerk. By O. E. Benham, Deputy.

Mr. GREENE.—I have taken it for granted, Mr. Dorsey, that your case is submitted; that is, that your have put in the affirmative matter in your petition here?

Mr. DORSEY.—I would like to call one more witness before I conclude.

Mr. GREENE.—Excuse me, you come first then.

Mr. DORSEY.—I would like Mr. Belford to take the stand. [57] This is sort of a second thought.

TESTIMONY OF SAMUEL W. BELFORD, FOR APPLICANTS.

Mr. SAMUEL W. BELFORD, called as a witness by applicants, having been duly sworn, testified as follows:

The WITNESS (on Direct Examination by Mr.

(Testimony of Samuel W. Belford.)

DORSEY).—I have been familiar with the affairs of the receivership since the appointment of Mr. Smith. I think that I have been in court each time that Mr. Dorsey has been in court since these controversies arose, beginning in May, 1923. I know what services were performed by Mr. Cashman and what services were performed by Mr. Dorsey.

Q. What, in your judgment, is the value of those services?

A. I think they have a very great value, Colonel Dorsey; I would say anything between—

Mr. GREENE.—If your Honor please, we offer the same objection we made to the other testimony, on the ground that any allowance to counsel for the company under the circumstances in this case is obviously improper.

The COURT.—Objection overruled.

Counsel for the interveners thereupon excepted to said ruling of the Court and hereby assign said ruling as Interveners' Exception No. 3.

A. I would say, Colonel, from what I know of that controversy, that your services ought to be worth at least ten thousand dollars, and possibly more. If they had been rendered for me as a private client, and I had the money to pay for them, I would pay more than that. [58]

Cross-examination by Mr. GREENE.

The WITNESS.—(Continuing.) Assuming that Mr. Dorsey's services had been rendered in behalf of Union Land and Cattle Company, certain cred-

(Testimony of Samuel W. Belford.)

itors, but not all of the creditors, I certainly would feel that the service to the company was of the amount that I have named. Colonel Dorsey represented the Union Land and Cattle Company; his services for the Union Land and Cattle Company were directed to the preservation of the estate of the Union Land and Cattle Company; the preservation of the estate of the Union Land and Cattle Company may have been the salvation of the creditors of the Union Land and Cattle Company, so I say that his services were worth more than what I have suggested. In May or June, I am not sure, 1923, through the First Federal Trust Company and the First National Bank of San Francisco and through the banks that you are now representing, an effort was made in this court to require the receiver to turn over to the First Federal Trust Company for immediate sale all of the mortgaged lands of the Union Land and Cattle Company; following that or coincident with it, an effort was made by the banks to require the receiver to sell at forced sale, in the language of your petition at a forthwith sale, all of the unmortgaged, assets of the Union Land and Cattle Company. That meant in my mind the absolute destruction of the estate of the Union Land and Cattle Company. It meant that there should be offered at public auction something like 80,000 head of livestock under the hammer; it meant that there should be offered at public auction 226,000 acres of land; it meant that the land was to be stripped of its cattle; that instead

(Testimony of Samuel W. Belford.)

of selling these assets as going concerns, they were to be sold separately under forced sale. Mr. Moffat testified that the shrinkage in the value of the estate would amount to not less than a [59] million six hundred thousand dollars. Mr. Petrie testified that such a program would involve a loss of at least 75 per cent in the value of the land; so that the controversy there was whether or not this plan should be put through, meaning a sacrifice of at least 75 per cent of the value of this property. That was the thing that was in issue, and that being in issue, considering the part taken by Colonel Dorsey in the representation of the Union Land and Cattle Company, is what I base my opinion on; and I desire to reiterate if he were representing me, and I had the financial ability to pay, I would not hesitate to pay a great deal more than ten thousand dollars. In all the steps which I have referred to, I took the same view, and Judge Brown took the same course of procedure that Colonel Dorsey did. Judge Brown and I consider that we did all that we could and we consider that Colonel Dorsey and his firm did all that they could. I think that we in our capacity as the representatives of the Court took exactly the same attitude with reference to matters to which I have adverted that was taken by Colonel Dorsey. I expect to be paid for my services out of a fund as the representative of the Court, whatever the circumstances. I expect to be paid as you (referring to Mr. Greene) are paid, and every other lawyer is paid;

(Testimony of Samuel W. Belford.)

we have to live, pay office rent, and we have to get along in this world the best we can; the only thing we have to sell is our labor and our services and I expect to be paid just as you are. I think that it would be a very difficult matter to determine as to whether there was any original contribution to the program which I have just referred to, by Colonel Dorsey and his associate. During these hearings here, we were consulting all the time as to the propositions of law that we thought were involved and the propositions of law that ought to be presented to the Court. [60] I could not say, I would not undertake to say who originated anything. We were co-operating throughout in an endeavor to save this estate from the destruction we thought would follow the granting of the relief asked for in your (referring to Mr. Greene) petition, and we were also co-operating in opposition to the petitions filed at various times by the banks and by the First Federal Trust Company. In connection with the preparation of briefs in the Circuit Court of Appeals, Colonel Dorsey and ourselves did not collaborate as we did as a general principle throughout the year that has just elapsed. I didn't have a chance to do it. When we were getting to the point of the preparation of the briefs, I commenced the writing of the briefs in all these cases, and I completed the first draft of these briefs, I believe in March, early in March. I had to go to Washington to look after a case that was set for argument there on the 14th of March, and the briefs were

(Testimony of Samuel W. Belford.)

left with Judge Brown when I left for Washington, so that such additions might be made to them and such rearrangement might be effected as was made necessary by the briefs filed by your firm and by Mr. Jones' firm. I had no opportunity to consult Colonel Dorsey with reference to those briefs at all. Colonel Dorsey was not associate counsel for the receiver when I was working on my brief. I was working on my brief on March 9th. I think I left here either March 9th or March 10th. Colonel Dorsey and I were not co-operating except in this way and I am not even sure of this, but my best recollection is that before I went to Washington, I wrote to Colonel Dorsey and Mr. Cashman, enclosing them an outline of the argument that was to be contained in the briefs. That was not to be a joint brief filed by me and Colonel Dorsey—it was not, not at all; it was a brief that I intended [61] to file, or rather, my firm. The reason that we and Colonel Dorsey filed separate briefs although we jointly represented the receiver was that because at the time of the preparation of this brief, I did not know about Colonel Dorsey representing the receiver. I didn't know of the appointment of Colonel Dorsey at the time the appointment was made. It was on my return from Washington, about the 22d or 23d of March, 1924, that I was first advised of that appointment. I naturally had some discussion with the receiver with reference to the preparation of those briefs. I don't know how I can outline what that discussion was. I

(Testimony of Samuel W. Belford.)

talked with Mr. Smith concerning the preparation of the brief; I think we went all over the subject. Nothing in particular was a point of issue in the discussion except in this way; I told Mr. Smith as nearly as I could recall it that in my judgment the case was going to turn on certain propositions of law. I can simply summarize this because I would not undertake to say what our conversation was. As to the First Federal Trust Company, that there was no default, that this was not such a receivership as was contemplated by the deed of trust; that the receivership was a matter in which the First Federal Trust Company had actively participated; that it was a party to the receivership; that it was a remedy suggested by the First Federal Trust Company for the benefit of itself and everybody else; that even if a default existed it had been waived by the acceptance of the payments of principal and interest; that the First Federal Trust Company was estopped to assert a default, even if such a default existed. So far as 4195 was concerned, that was the petition of the banks, I told Mr. Smith that was a matter which, as I understood the law, rested in the sound discretion [62] of this Court; that the plan proposed by the banks represented sheer destruction of this estate, as we saw it, and that I didn't believe any Court ought to order that sort of liquidation. Now, those were the discussions that I had with Mr. Smith; and I think I left Mr. Smith with an outline of the argument that I intended to follow. There was some

(Testimony of Samuel W. Belford.)

discussion with Mr. Smith as to my attitude with reference to the findings of fraud against the various banks that were involved. I will state the substance of those discussions. I told Mr. Smith that, as I viewed this case, the fraud ought to be placed —I won't say fraud, I didn't use that word. Let me see if I can tell you what I did say: That the duplicity or bad faith of bringing this proceeding, in my judgment, should be placed squarely upon the present management of the First National Bank and the First Federal Trust Company, and that that was what I was going to contend for in the discussion of that question; that they were parties to the receivership; they knew all about the receivership, and having participated in it, having taken its benefits extending over a period of nearly three years, that I thought they were guilty of the worst sort of bad faith and unconscionable conduct. I don't know whether Mr. Smith agreed to that method of presentation or not. I simply told him I was going to present it. Incidentally that was what the Circuit Court of Appeals found and said in its opinion as to their conduct; the facts admitted of no doubt. I don't think Mr. Smith ever had any discussion with me with reference to the presentation by me or my office of the findings of fraud by his Honor, Judge Farrington, in his opinion so far as that presentation was to be made to the Circuit Court of Appeals, except in the way I am telling you. My recollection is that I told Mr. Smith that, in my judgment, [63] the record

(Testimony of Samuel W. Belford.)

showed that the First Federal Trust Company and the First National Bank were guilty of bad faith of the worst sort. We were discussing the plaintiffs in this case, or the petitioners in this case. We thought they were all together, all sleeping in the same bed. I don't know whether there was unanimity so far as I and Mr. Smith were concerned upon the question of presentation, I could not tell you. I don't know whether you would call it lack of unanimity or not; I simply stated what my argument was going to be. I think there was no criticism or objection from those to whom I owe my employment in connection with that presentation. My client was Mr. Smith. There was no objection to that. I told them frankly what I was going to argue on the argument. I was not requested to argue in favor of any findings of fraud. I told Mr. Smith what I was going to argue; I told Judge Farrangton what I was going to argue; I gave them an outline of my argument, as to what that argument was to be, and that argument was set out. I told Judge Farrington, as I recall the conversation, that I would regard it as an entirely proper matter on his part to select counsel to argue this case on a line different from my own. I did not have a discussion with Judge Farrington, which resulted in my suggesting to him that he employ counsel. I had a discussion with Judge Farrington in which I suggested that I would regard it as a matter of entire propriety that other counsel should be employed. I happened to make that suggestion to

(Testimony of Samuel W. Belford.)

him because I told him what I was going to argue. As to whether the suggestion that other counsel should be employed was a necessary corollary to my stating to him what I proposed to argue, I have no objection to answering. I don't know whether it was or not. I told Judge Farrington that he was entitled to know the position I would take in the [64] argument of these cases; and as I recall, I left Judge Farrington an outline of that argument; and my judgment of this case was that the bad faith of this proceeding should be placed upon the management of the First National Bank and the First Federal Trust Company, the present management; and that Judge Farrington would not be overstepping the bounds of propriety, in my opinion, if he selected counsel to argue any other theory of this case. Judge Farrington did not advise me with reference to his attitude on this matter. I never saw Judge Farrington again until after my return. I don't recall that Judge Farrington criticized me at all for my attitude as above outlined.

Redirect Examination by Mr. DORSEY.

The WITNESS.—(Continuing.) I stated my conviction and my opinion and my sense of injustice committed by someone to the officers, or some of the officers, of the First National Bank and the First Federal Trust Company. I not only stated that to Mr. Smith, but stated it to Mr. Avenali and I think I stated it to Mr. John A. Hooper. I did not state it in effect; I said it directly and specifically, there wasn't any effect about it. I told them

(Testimony of Samuel W. Belford.)

that, in my judgment, the bad faith of the First Federal Trust Company was due to the present management of the First Federal Trust Company.

The WITNESS.—(Continuing Under Examination by the Court.) As to whether I was informed by the Court before Mr. Dorsey was actually employed that it was in contemplation, and that the order would be made, I think that Judge Farrington and I had a conversation over the telephone; I am not clear about this but it is my best recollection, in which he stated he had appointed Colonel Dorsey, and I said that was satisfactory. [65] I think that was subsequent to my return from Washington. I think the same day or the next day.

TESTIMONY OF GEORGE S. BROWN, FOR INTERVENERS.

GEORGE S. BROWN, a witness called by the interveners, testified as follows:

The WITNESS (Under Direct Examination by Mr. GREENE).—I was not present at the conference to which Mr. Belford referred with Judge Farrington; nor at any conference with reference to the treatment by counsel for the receiver of the briefs in connection with these appeal matters. I was present at some of the conferences between Mr. Smith and Mr. Belford with reference to the presentation of those appeals. At those conferences there was reference to the treatment to be given the matters to which we have been referring here

(Testimony of George S. Brown.)

on the appeal along the lines that Mr. Belford has stated. At such conferences, there was no suggestion of a desire on the part of anyone that findings of fraud in the opinion should be upheld in connection with the presentation to the Court of Appeals, nor was there any suggestion of that sort elsewhere; so far as I am concerned, that matter was not a subject of conversation between me or any of the people for whom I may have been acting in this matter.

Mr. DORSEY.—I think all I have to say is that I realize the need for economical administration of the affairs [66] of this receivership; I know every dollar that is spent is a dollar taken from the creditors. I think that every man who labors for the benefit of the receivership should receive some reasonable compensation, but it should not be excessive; it should be borne in mind always that this company is poor, that it is not able to pay all of its debts, and I think everybody should be content to receive a bit less than he would ask if he was working for a wealthy client. I say that particularly in view of the fact that we have applied for compensation; and I would like the Court to understand that all we ask for, and whatever conclusion the Court should come to, if it should think we are entitled to anything in any capacity, all we ask for is a very reasonable or very moderate compensation considering the services we have rendered. I say that for one reason because of what was said here at the time the effort to return the properties

to the company failed. I know that it came before this court, and went out before the people interested, that the people who were to take over the management, who elected themselves, or had themselves elected officers of the corporation, saddled at once upon the company a very large sum of money, in the aggregate something like $100,000 or more. I know that some of those fees were large, and were fees asked for services rendered solely and wholly for creditors, and not for the company; solely and wholly to put the company in the hands of the men who sought to control it, and not in the interests of the company, I believe. I know that Mr. Moffat, who was president of the company, objected to the allowance, or the consideration of allowing any such sums of money that were demanded; and I know that he has had in mind always that whatever is done here should be done at the least overhead, the least possible expense, and all in the interest of the company, of this receivership. And [67] feeling as I do toward Mr. Moffat, and knowing the condition of this company, I ask the Court, if it gives us anything at all, to consider that view. All we ask and all we want is a very moderate compensation for services.

Mr. GREENE.—Are you now asking for compensation for services rendered to the receivership or not?

Mr. DORSEY.—I have presented my views on that.

Mr. GREENE.—You filed a petition first asking

for compensation; you then asked to have that part stricken, and I understand now you are asking for it. I want to get clear whether you are or are not asking.

Mr. DORSEY.—I am asking the Court to allow us for services performed. Upon what ground he makes that allowance is for the Court to determine. I am confident any service rendered for properties in the hands of a receiver, that tends for the benefit of those properties, and for the benefit of the creditors, is entitled to compensation. That is my view, and I think I would be entitled to ask for fees as attorney for the company, and that I would be entitled to ask for fees if I, a creditor of this company, should come in without being asked, and should force my way into the litigation, and it should result in saving to the creditors large sums of money, or benefit the estate, and would be entitled to have back my expenses, and a reasonable compensation.

Mr. GREENE.—Am I correct in understanding that you do not urge the allowance to yourself as counsel for the receiver?

Mr. DORSEY.—You are not correct in anything you have said concerning that subject. I am asking for compensation for services performed. The services I performed primarily for the company; if I did anything in aid of the receiver, it was because [68] the receiver and I were in accord with this phase of the matter. Both of us wanted to conserve these assets; both thought these prop-

erties would be taken away, and would be utterly destroyed; we were working together; whatever he said to me was for the benefit of this company; whatever I said to him was for the benefit of the receivership; what we discussed, my aim and his, was to benefit the creditors; and I said to you yesterday, your creditors as well as mine.

Mr. GREENE.—Am I to understand that the request or motion you made eliminating from your petition any request for compensation to you on account of services to the receiver, stands as an elimination, or that you desire it restored?

The COURT.—I want to say now I am responsible for the appointment of Mr. Dorsey, and I feel that he rendered very valuable service, and my intention is to make an order compensating him for his services. Of course if he refuses to take the money that is his affair; but he has rendered the service at the request of the receiver and at my request, and we are in duty bound to remunerate him. That is the way I look at it, and I feel he has rendered valuable service. Of course if he and his associate refuse to take the money, I have no way of compelling them to take it if they don't want it.

Mr. GREENE.—I suppose, if your Honor please, it is unnecessary, but probably not out of order, for me to say we object to the making of an order of that character.

The COURT.—That don't convey any information to the Court. Of course, you can make your

objection and take an exception when the order is made.

Mr. GREENE.—Would your Honor permit me, in order to shorten the time, to file at the commencement of the afternoon [69] session a formal objection to the making of the order? I think it will save time.

The COURT.—I said plainly that was my view of the matter, and the order would be made allowing compensation, because Mr. Dorsey had rendered exceedingly valuable services to this estate, and had rendered them at the request of the Court, and on the order of the Court, and at the request of the receiver. Mr. Belford coincided with that view, and my reasons for employing Mr. Dorsey and Mr. Cashman I will give. If you object to the written statement, I certainly will not make it; I will make the order. [70]

Mr. GREENE.—I think the objection from the point of view of the parties whom I represent to the making of such an order is clear, and in order that there won't be any misunderstanding about it—

The COURT.—You may take all the time you want to prepare objections and exceptions. You can make them this afternoon or make them down below and send them up here later.

TESTIMONY OF W. T. SMITH, FOR APPLICANTS.

Mr. W. T. SMITH, called as a witness under examination of the COURT.

The WITNESS.—I received the letter just handed to me and am acquainted with the signature at the bottom of it. That signature is Mr. Spreckels'.

The COURT.—That may be marked for identification. I may not use it, but if counsel wish to examine the letter they may do so.

The letter was thereupon admitted in evidence by the Court without objection by any of the parties, and was in the following words and figures, to wit:

"Rudolph Spreckels
First National Bank Building
San Francisco.

January 13, 1922.

Mr. W.T. Smith, Receiver,
Union Land & Cattle Co.,
Reno, Nevada.

Dear Mr. Smith:

Your letter of January 10th received and frankly I was disappointed to find that you are not in a position to submit an outline of the company's financial situation.

It seems to me very important to keep accounts sufficiently up-to-date to enable you to know very closely the result of each month's operations. The

Creditors Committee will have a representative here in a few days with full power to act and to cooperate with me. The committee have come to [71] the conclusion that we might as well call the creditors' agreement off and to take immediate steps to secure control of the company's affairs or failing in that to petition the Court for an order to sell the properties.

The present management has never been in accord with the views of the creditors' committee and they feel that we should not allow it to continue in charge a day longer than necessary. The creditor banks will not finance the company unless they have control of the management either through a receiver, who is in accord with their views, or by actual purchase of the properties at foreclosure sale. I know there will be no change from this determination and I would very much prefer to see matters arranged by agreement than to have the situation aired in court.

If you can be in San Francisco early next week, I believe we could quickly arrive at some settlement satisfactory to all.

I feel I owe it to you to be very frank about these matters and trust you will agree that I am right in thus presenting matters to you.

Yours very truly,

R. SPRECKELS."

TESTIMONY OF W. T. SMITH, FOR APPLICANTS (RECALLED).

Mr. W. T. SMITH, recalled by the applicants as a witness, testified as follows:

Direct Examination by Mr. DORSEY.

The WITNESS.—I was responsible for your employment.

The WITNESS.—(Continuing—Under Cross-examination by Mr. GREENE.) The circumstances under which I employed Mr. Dorsey were as follows: When the litigation first commenced here in regard to the Union, I told Judge Farrington, and I also told Brown & Belford, that I thought the Union should be represented by some attorney, and Mr. Dorsey and Mr. Cashman were more or less familiar with the thing here in San Francisco, and I told them the circumstances, and I thought the Union Land and Cattle Company as a corporation should be represented in this sort of thing; and I said to them, the Union has no money, it has no way to raise any money, I don't [72] know as you will ever be paid for the work you are doing now, but if it has to be done some of us will have to go down in our pockets and dig it up; and they went on with the work. Then when you filed these suits here of the First Federal Trust Company and the banks, I told Judge Farrington at that time I thought we should have additional counsel to represent the receiver; he agreed with me. I went

(Testimony of W. T. Smith.)

to San Francisco, and I think Judge Farrington made an order giving the receiver permission to employ additional counsel. I went to San Francisco, and I talked to Mr. Dorsey and Mr. Cashman about the thing, and they were willing to undertake it; the question in their minds was whether it should be undertaken as being employed by the receiver, or whether it should be done for the Union Land and Cattle Company; it was finally decided that they should be employed for the receiver; and in some manner, I don't know how, I communicated with Judge Farrington, and he issued an order that I could employ Mr. Dorsey and Mr. Cashman as attorneys for the receiver. I am a stockholder of the Union Land and Cattle Company and it was first determined by me that the Union should be represented at the initiation of the entire proceeding, as I remember, when the proceedings were first commenced towards liquidation. I can't tell you the date, but I mean in the spring of last year, some time ago. I took the following action towards securing the employment of Mr. Dorsey at that time: I was in San Francisco, and I told Mr. Dorsey, after consultation with Judge Farrington and with Brown & Belford that I thought the Union Land and Cattle Company as a corporation should be represented in these proceedings, and then I talked to Mr. Dorsey and Mr. Cashman about it and said what I have told you. It was not my understanding that in the spring of last year [73] Messrs. Dorsey & Cashman were rep-

(Testimony of W. T. Smith.)

resenting me as receiver, not until the filing of the petitions for liquidation. Then for the first time I went and employed Messrs. Dorsey & Cashman to act for the Union Land and Cattle Company, in my capacity as receiver. That is the first time. I don't know what the date was. I gave no notice of that to any party to the proceeding. I only told the Court I thought it should be done, and Brown & Belford. It wasn't any secret; I just told them I thought the Union Land and Cattle Company as a corporation should be represented in these proceedings, and that is the reason why I spoke to them. I had no authority from the Court, no authority from anybody, just simply a personal matter that was. It was not about that that I spoke to Judge Farrington, and he gave me authority—that was in regard to the receivership. I didn't say that when I approached Dorsey & Cashman last spring with reference to an employment of them by the Union Land and Cattle Company, that I did so as receiver. I only talked to them and told them I thought somebody should be employed to represent the corporation, the Union Land and Cattle Company; and probably what I said to them was not in the nature of receiver's authority, but perhaps in the nature of stockholders, if you want to put it that way; that wasn't intended to bind or involve the receiver in any sort of way. I was receiver at that time and I suggested that to them at that time, but not as receiver, at least I did not so intend it. It is not my under-

(Testimony of W. T. Smith.)

standing that by my action taken in the spring of 1923 I in any way committed the receivership to the payment of any disbursements on account of any services that they might render from that time on. I feel entirely free from obligation as far as the receiver is concerned at that time; I had [74] no authority to do it. What prompted me to reach the conclusion that the Union should be represented by Mr. Dorsey and Mr. Cashman was because the Union Land and Cattle Company was a corporation, it was not extinct, and as long as proceedings in court were going on, which might affect the stockholders of the Union Land and Cattle Company, I thought somebody should represent the corporation. The stock of my son-in-law, Charles B. Henderson, has passed out of his hands. I can only tell you that my action taken in the spring of 1923 was taken as an individual, trying to see my way clear to do my duty to the Union Land and Cattle Company, for which I was receiver. When I consulted Messrs. Dorsey and Cashman in 1924, it was after proceedings were commenced for the foreclosure of the mortgage, and the application of the banks for the sale of the property, whatever time that was. I could not tell you whether I had occasion to talk with Messrs Dorsey and Cashman, it was about August, 1923, with reference to employment—I don't remember that. Assuming that the petitions of the banks were filed in August, 1923. I consulted with Messrs. Dorsey and Cashman with reference to

(Testimony of W. T. Smith.)

their representation of me as receiver, after those suits were commenced. I should say it was immediately after. The nature of my consultation with them at that time was that I had talked to Judge Farrington and had advised that additional counsel be employed to represent the receiver before the appellate court, in proceedings before the appellate court. I did not understand that my conference at that time amounted to an employment of Messrs. Dorsey and Cashman—not in the beginning, but afterwards I had authority to do it, then they were employed. I can't give you the dates, except as you have them in the papers; I don't [75] remember the dates. To the best of my recollection, they were employed to represent the receiver almost immediately after the filing of the applications of the banks for foreclosure of the property. I think they only represented me as receiver until the case was decided in the appellate court. I talked to the Judge about the employment, and I think Brown & Belford knew it; I don't know whether they did or not, I have forgotten now. Messrs. Dorsey and Cashman were employed to appear for the receiver in the proceedings before the appellate court—before the Circuit Court of Appeals. Messrs. Dorsey and Cashman were not employed by me until the suits were brought and an appeal was taken to the appellate court, or whatever you call it, the United States Circuit Court of Appeals; then they were employed to represent the receiver in the hearing be-

(Testimony of W. T. Smith.)

fore the United States Circuit Court of Appeals. They were not employed to render services before the District Court. As I stated, I went there in the first place after these suits were commenced. I came over and conferred with the Judge and told him I thought we should have additional counsel and I went to San Francisco—he made an order, his order is in Reno, I haven't it here, that I could use my own judgment, if I remember correctly, as to the employment of counsel. I went to San Francisco and talkel to Mr. Dorsey and Mr. Cashman, told them the circumstances, and asked them if they would take it up; they replied that they would and then the Judge issued an order authorizing me to employ them. What prompted me to employ other counsel was because I thought it was necessary, the importance of the suit that we should have additional counsel. I was not in the least dissatisfied with the services of Brown & Belford. What I expected to gain by the employment of other counsel was just [76] additional heads to try to present the case properly before the court in San Francisco. I suppose I did have some discussion with Mr. Dorsey and Mr. Cashman with reference to the handling of the case. I don't remember whether I had any discussion with reference to the method which they were to employ in treating the findings of the District Court with reference to the various banks. I don't remember discussing any matter of that sort. I don't remember any particular discussion in regard to

(Testimony of W. T. Smith.)

that; I don't remember that I did not discuss that subject. At the time I employed Messrs. Dorsey and Cashman, there was no discussion with reference to compensation. I did, however, as I have stated to you, have a conversation with them at the time I discussed this matter with them in May of 1923, with reference to compensation. I think the language I used was that the Union itself had no money, and that if the fee had to be paid some of us would have to go down in our pockets and dig it up. I certainly understood that I was obligated to do that in case it was not paid from other sources. My action in employing Messrs. Dorsey and Cashman in connection with the Circuit Court of Appeals was taken after consultation with the Judge. In the beginning, in regard to the Union Land and Cattle Company, I was responsible for that employment, and not anyone else; in the latter instance, I talked with Judge Farrington about it and told him what I thought; and I think in the first instance, I talked to Brown & Belford about Union Land and Cattle Company being represented.

The WITNESS.—(Continuing—on Redirect Examination by Mr. DORSEY.)

Mr. DORSEY.—(Q.) Mr. Smith, I understood you to say a moment ago that you would regard yourself as responsible for the [77] fee for services performed for the Union Land and Cattle Company under the employment of about May, 1923?

(Testimony of W. T. Smith.)

A. I don't remember the date, Mr. Dorsey.

Q. You state you regarded yourself as responsible? A. Yes.

Q. Do you remember that I told you I would not hold you responsible? A. I think I do.

TESTIMONY OF J. W. DAVEY, FOR APPLICANTS.

Mr. J. W. DAVEY, a witness called in behalf of applicants, having been sworn, testified as follows:

Direct Examination by Mr. DORSEY.

The WITNESS.—In 1920 I was connected with Union Land and Cattle Company, being director and secretary of the company at that time. I remember two agreements, called respectively creditors' and trust agreements, dated about May 1, 1921, I am not sure about the dates. I know Mr. Joseph Hooper who was a director in my corporation. He was an officer, either of the First Federal Trust Company or the First National Bank; as I understand it, under the trust deed the First Federal Trust Company is entitled to a representative on the Board of Directors of the Union Land and Cattle Company, and Mr. Hooper was on the Union Land and Cattle Company Board of Directors as a representative of the bank. The agreements of May 1, 1921, were presented to the Union Land and Cattle Company.

Mr. GREENE.—May I ask, Mr. Dorsey, I don't want to cause needless waste of time, what the materiality of this is?

(Testimony of J. W. Davey.)

Mr. DORSEY.—I understand your inquiries to be directed to establishing in some manner that there was no occasion for criticizing anybody connected with this litigation or with this receivership of wrongdoing or fraud; that was the purpose of your question, as I understand it, and I want to show you what was [78] done, and I want to establish here what was done that caused the Union Land and Cattle Company, its officers and its attorneys, and I suppose the Court, to believe that ugly things were at work on behalf of the creditors.

Mr. GREENE.—I don't understand there is any such issue before the Court, and I object to it as immaterial on this application. [79]

Mr. GREENE.—Colonel Dorsey, your application was for compensation as an attorney who had been employed to represent the receiver; we could not see any reason for that employment except to do something that other counsel in the receivership were not willing to do, and it seemed to us it was not proper to penalize the creditors as a whole for such employment. Now if the suggestion and that contention involves going into matters which seem to me not germane, I certainly am not going to take a position of attempting to block investigation along any line the Court or you [80] wish to have followed. You can go just as far as yau want.

Mr. DORSEY.—What is the last question?

(The reporter reads the question.)

WITNESS.—They were presented to the Union

(Testimony of J. W. Davey.)

Land and Cattle Company for the purpose of getting the corporation to consent to the agreement.

Mr. GREENE.—Your Honor will appreciate I have made an objection here, and you have overruled it [81]

Mr. GREENE.—I have, your Honor, voiced an objection to that question.

The COURT.—The objection is overruled.

Counsel for the interveners thereupon excepted to the Court's said ruling and said exception is hereby assigned as Interveners' Exception No. 4.

The WITNESS.—(Continuing.) My recollection is that the said agreements of May 1st, 1921, were brought here by Mr. Hooper. There were four directors of the Union Land and Cattle Company present at that meeting, namely, Mr. Moffat ,Mr. Smith, [82] Mr. Hooper and myself. Mr. Moffat and I didn't know all of the contents of these two agreements; up to that time we had talked to each other about it, but at the time the meeting was being held, we asked some questions about it. During the conference Mr. Hooper made a statement that if the Union Land and Cattle Company did not agree to those agreements that they, meaning probably the Bank, would have to take over the property. Mr. Smith made a statement to Mr. Hooper at that time, that he thought Mr. Hooper was not justified in making such statements as that, and he didn't want to hear any more from him along that line. The meeting proceeded, the resolution was passed authorizing the signing of the agree-

(Testimony of J. W. Davey.)

ments by the corporation. I know P. S. Scales, a gentleman connected either with the First National Bank or the First Federal Trust Company. I don't know if he is an officer in either of those banks; I always understood he was a representative of the bank or a representative of Mr. Rudolph Spreckels, or of both. Mr. Rudolph Spreckels was the president of those banks at that time. I had a discussion with Mr. Scales about the signing of the agreement.

Q. What was that conversation?

Mr. GREENE.—Object to the question along the same line; also not binding on those whom I represent.

Counsel for the interveners thereupon excepted to the said ruling of the Court and hereby assign said exception as Interveners' Exception No. 5.

The WITNESS.—(Continuing.) Mr. Scales approached me for the purpose of having me, as a creditor and stockholder, sign the [83] creditors' and stockholders' agreements; I told him I wasn't in accord with any plan that placed the entire management of the company in the hands of Mr. Spreckels for the Bank in San Francisco, and that I didn't feel like signing those agreements. He told me at that time that if I didn't sign those agreements, it would become necessary for the Bank to take over the property, and that myself, together with the rest of the creditors, would not receive fifty cents out of the dollar on our claims. Nobody was present at this con-

(Testimony of J. W. Davey.)

versation. I remember where it was, yes; I don't remember the exact date. I was occupying a room on the third floor of the Reno National Bank Building, and Mr. Scales called on me in that room. I don't remember the exact date now, but it was along about the time—it was just following this meeting of the Union Land and Cattle Company, when the consent was given to sign the agreement. It was during the period when that first stockholders' and creditors' agreement was in circulation for signature.

TESTIMONY OF W. H. MOFFAT, FOR APPLICANTS.

Mr. W. H. MOFFAT, called as a witness for applicants, having been duly sworn, testified as follows:

The WITNESS. (Under Direct Examination by Mr. DORSEY.)—In 1921 I was president of the Union Land and Cattle Company. I remember the time when the first creditors and stockholders and trust agreement, of date May 1, 1921, was presented to the company, or certain of its officers, for execution. Such presentation was made by Mr. Joseph G. Hooper, who was connected with the First National Bank and the First Federal Trust Company of San Francisco. The matter of signing that agreement was discussed a little *pro* and *con,* just for a few moments; it was talked over, yes; we talked [84] about it. As far as I can remem-

(Testimony of W. H. Moffat.)

ber, Mr. Smith and Mr. Davey and Mr. Hooper and myself were present. I don't remember whether there was anybody else present or not, but I know the four named were.

It was ordered that interveners might be deemed to have the same objection, overruling and excepting to this line of questioning, as covered by Exception No. 5.

The WITNESS.—(Continuing.) I think Mr. Davey has covered the matter fully as it occurred; that is my memory of it, so you can refer to his conversation as my answer. I may and I may not have ever had any further conversation concerning the execution of those agreements, either as a representative of the Union Land and Cattle Company, or as a stockholder, or in some other capacity, with some representative of either of the banks named; more than likely I did. My recollection is that I probably did; I would not say positively, but I think that I talked to Mr. Hooper regarding it; I would not say positively; discussing the matter in a general way, that is my memory. I don't think that I had ever talked it over with Mr. Spreckels about the execution of that agreement. I can't say definitely as to whether Mr. Hooper stated to me that, as representative of the Union Land and Cattle Company, if I did not sign them, they would take over the property, or whether he said they would foreclose the trust deed; I wouldn't want to say positively, but he imparted to the people present words to that effect; I can't say the exact words,

(Testimony of W. H. Moffat.)

but his meaning was that if the Union Land and Cattle Company would not agree to the methods of procedure which were about to take place in the directors' meeting, that would be what would probably occur. Following that statement, or threat, if you please, there was a meeting and resolutions were passed in accordance [85] with which the agreements were signed. [86]

TESTIMONY OF A. CRAWFORD GREENE, FOR APPLICANTS (RECALLED).

A. CRAWFORD GREENE, recalled as a witness by applicants, testified as follows:

The WITNESS (Under Direct Examination by Mr. DORSEY).—My recollection is that the second agreement of January 15, 1923, was never presented to the Court; that we went into chambers and came out of chambers, and it was finally withdrawn. I was present when it was discussed in the presence of the Court in Judge Farrington's chambers; the date was somewhere around the first of May, 1923. As to the question as to whether at that time I stated to anyone that failing to sign that agreement, the creditors would not get two bits on the dollar—if you mean at the time that conference was held before Judge Farrington in his chambers, the answer is no; but we went out of Judge Farrington's chambers and went outside of the courtroom here and my recollection is that Mr. Moffat and Mr. E. E. Brown and I should say, possibly, Mr. Smith—it did not make any particular

(Testimony of A. Crawford Greene.)

impression on me; I happen to remember the occasion because I was considerably disappointed—we were together, and I said I considered it a great misfortune from the point of view of the creditors that the plan had to fail, and, in my judgment, as a guess, the creditors would not get more than between twenty-five and fifty cents on the dollar. I have known Mr. E. E. Brown for a number of years. I saw him two or three weeks ago. I saw him after the receiver had filed a petition here requesting instructions as to how to proceed in the future in the matter of liquidating the affairs of the Union Land and Cattle Company. That petition was filed on May 10th and it was after that that [87] I saw him. Mr. E. E. Brown represents the eastern banks in a very informal sort of way. There are seven banks and Mr. Brown is the conduit of information that passed back and forth; and also as a lawyer, advises them from time to time. My judgment is that he with others has been the representative of those eastern banks since the appointment of the receiver. I don't want to give the impression that he alone is the representative there; he is one of the people that have been in touch with the situation; he has come out here with power to represent those banks from time to time; he came out here one time with several hundred thousand dollars—at the time that the second agreement of January 15, 1923, was to have been signed. This several hundred thousand dollars, to which you have referred, consisted of about $60,000 to pay ten

(Testimony of A. Crawford Greene.)

per cent to local creditors; and the balance was to supply the Union Land and Cattle Company with working capital, and to pay expenses that were involved in the property's reorganization. This money was, as I understand it, on deposit subject to his order for the purposes that I outlined. When Mr. Brown came out here within a short period, the last time I saw him, he came with Mr. T. W. Bowers, Vice-President of the National Bank of Commerce; I came together with them from the East. As to whether Mr. Brown told me, either in the presence or without the presence of Mr. Bowers, that if the receiver were discharged and another receiver named by him should be appointed, that nothing would be urged toward the liquidation of this company for another year, I replied as follows:

Mr. Brown and Mr. Smith were in my office some two or three weeks ago, and Mr. Smith had stated in general terms an idea that he had with reference to liquidation of the property; Mr. Brown [88] had told him with entire frankness, and I think Mr. Smith will agree with candor, that from the viewpoint of the eastern creditors it was most desirable that he should resign, and that Mr. Petrie should be appointed in his place; that a program had been approved by the eastern creditors, which of course was suggestive only to the Court, that the Court would proceed within the limits prescribed by the Circuit Court of Appeals; and from the point of view of the eastern creditors it was essen-

(Testimony of A. Crawford Greene.)

tial that a date be fixed on which the property be liquidated; that he was willing, however, if Mr. Petrie could be given full rein to attend to the sale and the liquidation of the property, not to press the petition at this time, but to see what results could be brought about by an effort of two or three months toward liquidation. There was other conversation, but substantially I think that is the basis of the discussion. Mr. Brown did not say that if Mr. Smith would withdraw and Mr. Petrie, or at least someone else, would take his place as receiver, no steps would be taken by the eastern creditors during the remainder of this year. Nor did he say that under such circumstances, no steps would be taken any way during the remainder of this year, nor during the year 1925; he made no statement approaching that or resembling it; and he would not have made such a statement without consulting my firm. Mr. Brown has been in the habit of consulting me concerning all things done here from about July of 1922. My firm succeeded Mr. Cushing as attorney for the First Federal Trust Company and the First National Bank after Mr. Cushing's withdrawal. It is of record that Judge Olney has stated that he advised the First Federal Trust Company to file an application, the first application that was filed by the trustee. In connection with the application filed by [89] the banks, that was done in conjunction with Mr. Brown and Mr. Henley and others. It is my recollection that it is the fact that I approved of the advice that Judge Olney has stated was given by

(Testimony of A. Crawford Greene.)

him. I had nothing to do with the First Federal Advisory end, but he did. Judge Olney and his firm is responsible for the beginning of these proceedings in May, 1923. They advised it and the proceedings were initiated; I suppose a principal is always eventually responsible for what he does. I suppose that the First Federal Trust Company is responsible for what it does and that, therefore, it shoulders the responsibility for the initiation of the proceedings beginning with the filing of the petition for leave to sue the receiver in May, 1923. When the petition was filed to sue the receiver in 1923, my firm represented the First Federal Trust Company. We didn't represent it in this proceeding in any sense; we represent it in other business. Mr. Jones is here representing the First Federal Trust Company. As far as the First Federal Trust is concerned, we don't represent it in any way in this proceeding. As far as First National Bank is concerned, I stated the other day it did not desire to be represented in this proceeding by anybody, and it is not represented in this present proceeding by us. We have at all times since 1923 represented the so-called eastern banks with a total claim of $1,800,000. At the time that you refer to, we also represented the First Federal Trust Company, whose claim was some, I suppose about $840,000, if my memory is correct, and the First National Bank, whose claim was $400,000. We had also been consulted by Hathaway, Smith & Foulds, who were the purchasers of the commercial paper;

(Testimony of A. Crawford Greene.)

that paper had passed to different owners, and they were not in a position to secure [90] their representation from each of the owners, but they wished us to represent them with the banks in their policy of liquidation and settlement as far as possible. That was in the beginning, in May of 1923. There has been no change in the status; but as I stated to his Honor before this, I have no definite legal authority, nor has my firm, to act for the individual holders of that paper at the present moment. Hathaway, Smith & Foulds, we have represented in numerous matters, but they have no standing here as such; we do not represent them here. [91]

The foregoing constitutes a full and complete statement of all of the evidence, documentary and oral, offered or presented on the trial and hearing of the application of J. W. Dorsey and W. E. Cashman for compensation as attorneys for Union Land and Cattle Company and special counsel for the receiver, and for repayment of costs and expenses alleged to have been advanced and paid on behalf of said Union Land and Cattle Company and its creditors, notice of which application was filed with the above-entitled court in the above-entitled cause on the 18th day of June, 1924, and also of all proceedings had thereon and the foregoing is herewith presented by the said interveners as and for the statement to be used by the said interveners upon their appeal from the order of said Court in said cause, made and filed on August 4, 1924, upon said application.

Dated ——, 1924.

McCUTCHEN, OLNEY, MANNON & GREENE,
THATCHER & WOODBURN,
WARREN OLNEY, Jr.,
J. M. MANNON, Jr.,
A. CRAWFORD GREENE,
GEORGE B. THATCHER,
Attorneys for Said Interveners. [92]

STIPULATION RE STATEMENT OF EVIDENCE.

IT IS HEREBY STIPULATED by and between the respective parties hereto as follows:

1. That the foregoing statement is a true, complete and properly prepared statement of evidence adduced upon the trial and hearing of the application of Messrs. J. W. Dorsey and W. E. Cashman for compensation as attorneys for Union Land and Cattle Company and special counsel for the Receiver and for repayment of costs and expenses alleged to have been advanced and paid on behalf of said Union Land and Cattle Company and its creditors, and of all of the said evidence, both documentary and oral, offered or presented upon said trial and hearing, and also of all proceedings had thereon;

2. That the foregoing statement may be approved by the above-entitled court and may be settled as and for the statement to be used by the said interveners upon their appeal from the order of said court in said cause made and filed on August 4, 1924, upon said application;

3. That the foregoing statement may be used as a statement of the evidence of said interveners upon the appeal by said interveners from the said order of August 4, 1924, [93] granting in part the application of said J. W. Dorsey and W. E. Cashman.

Dated: ——, 1924.

McCUTCHEN, OLNEY, MANNON & GREENE,
THATCHER & WOODBURN,
WARREN OLNEY, Jr.,
J. M. MANNON, Jr.,
A. CRAWFORD GREENE,
GEORGE B. THATCHER,
Attorneys for Said Interverers.

_____,
_____,
In Propria Persona.

_____,
_____,
_____,
Attorneys for W. T. Smith, as Receiver for said Union Land and Cattle Company.

_____,
_____,
Attorneys for Defendant Union Land and Cattle Company. [94]

ORDER APPROVING STATEMENT OF EVIDENCE.

Upon the foregoing stipulation, and good cause appearing therefor, the foregoing statement is

hereby found to be a true, complete and properly prepared statement of the evidence upon the trial and hearing of the above-mentioned application of J. W. Dorsey and W. E. Cashman, notice of which was filed on June 18, 1924, in the above-entitled cause, and of all proceedings had thereon, and as such it is approved.

It is further ordered that said statement may be used by said interveners herein upon their appeal from said order of August 4, 1924, made and filed by the above-entitled court upon said last mentioned application of said J. W. Dorsey and W. E. Cashman.

Dated: Nov. 26th, 1924.

E. S. FARRINGTON,
United States District Judge.

[Endorsed]: No. B-11—In Equity. District Court of the United States, in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant, Old Colony Trust Co., a Corporation, et al., Interveners. J. W. Dorsey and W. E. Cashman, Applicants. Statement of Evidence for Use on Appeal by Interveners from Order Awarding Compensation to Messrs. Dorsey and Cashman. Filed Nov. 26, 1924. E. O. Patterson, Clerk. By O. E. Benham, Deputy. McCutchen, Olney, Mannon & Greene, Attorneys for Interveners, Balfour Building, San Francisco, California. [95]

In the District Court of the United States in and for the District of Nevada.

IN EQUITY—No. B–11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation,

Defendant;

OLD COLONY TRUST COMPANY, a Corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Interveners;

J. W. DORSEY and W. E. CASHMAN,

Applicants.

PETITION FOR APPEAL AND ORDER ALLOWING SAME.

To the Honorable EDWARD S. FARRINGTON, District Judge of the United States in and for the District of Nevada:

The above-named interveners, Old Colony Trust Company, a Corporation, The First National Bank of Boston, a National Banking Association, National Bank of Commerce in New York, a National Banking Association, the First National Bank in St. Louis, a National Banking Association, National Shawmut Bank of Boston, a National Banking Association, National City Bank, a National Banking Association, and First National Bank of Chicago, a National Banking Association, [96] and each of them, feeling themselves aggrieved by the order and decree entered in this cause on the 4th day of August, 1924, authorizing and directing W. T. Smith, as Receiver of the above-named defendant, Union Land and Cattle Company, in the above-entitled action, to pay to J. W. Dorsey and W. E. Cashman Twenty-five Hundred Dollars ($2500) for services heretofore rendered said Receiver in the Circuit Court of Appeals, out of funds of said Union Land and Cattle Company in his hands as such receiver, do, and each of them does, jointly and severally appeal from the said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herein, and said interveners jointly and severally

pray that such appeal be allowed and that citation issue as provided by law and that a transcript of the record, proceedings and papers in said matter, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, State of California.

And your petitioners further pray that the proper order touching the security to be required of them to perfect their said appeal be made.

McCUTCHEN, OLNEY, MANNON & GREENE,
THATCHER & WOODBURN,
WARREN OLNEY, Jr.,
J. M. MANNON, Jr.,
A. CRAWFORD GREENE,
GEORGE B. THATCHER,
Attorneys for Said Interveners. [97]

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF BOND ON APPEAL.

The above petition is hereby granted and the above appeal is hereby allowed upon the said petitioners and interveners giving bond conditioned as required by law in the sum of Five Hundred Dollars ($500).

Dated, October 31st, 1924.

E. S. FARRINGTON,
Judge of the District Court of the United States for the District of Nevada.

[Endorsed]: No. B–11—In Equity. In the District Court of the United States, in and for the District of Nevada. The First National Bank of

San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant. Old Colony Trust Company, a Corporation, et al., Interveners, J. W. Dorsey, et al., Applicants. Petition for Appeal and Order Allowing Same. Filed Oct. 31, 1924. E. O. Patterson, Clerk. McCutchen, Olney, Mannon & Greene, Attorneys for Interveners, Balfour Building, San Francisco, California. [98]

In the District Court of the United States in and for the District of Nevada.

IN EQUITY—No. B–11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation,

Defendant;

OLD COLONY TRUST COMPANY, a Corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF

BOSTON, a National Banking Association, NATIONAL CITY BANK, a National Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Interveners;

J. W. DORSEY and W. E. CASHMAN,

Applicants.

ASSIGNMENT OF ERRORS.

Now come the interveners above named, Old Colony Trust Company, a corporation, The First National Bank of Boston, a National Banking Association, National Bank of Commerce in New York, a National Banking Association, The First National Bank in St. Louis, a National Banking Association, National Shawmut Bank of Boston, a National Banking Association, National City Bank, a National Banking Association, and First National Bank of Chicago, a National Banking Association, and as a part of their prayer for an appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, from the order of the [99] above-entitled court made and entered herein on the 4th day of August, 1924, authorizing and directing W. T. Smith as Receiver of the above-named defendant, Union Land and Cattle Company, in the above-entitled action to pay to J. W. Dorsey and W. E. Cashman Twenty-five Hundred Dollars ($2500) for services theretofore rendered said receiver in the Circuit Court of Ap-

peals, out of funds of said Union Land and Cattle Company, in his hands as such receiver, tender and file this their assignment of errors, to wit:

(1) Said District Court erred in said order of August 4, 1924, in directing said W. T. Smith as such receiver to pay to J. W. Dorsey and W. E. Cashman Twenty-five Hundred Dollars ($2500) for services theretofore rendered said receiver in the Circuit Court of Appeals.

(2) Said District Court erred in its said order of August 4, 1924, because it abused its discretion in authorizing and directing said W. T. Smith as such receiver to pay to J. W. Dorsey and W. E. Cashman Twenty-five Hundred Dollars ($2500) for services theretofore rendered said receiver in the Circuit Court of Appeals.

(3) Said District Court in said order of August 4, 1924, erred in directing said W. T. Smith as such receiver to pay to J. W. Dorsey and W. E. Cashman the sum of Twenty-five Hundred Dollars ($2500), or any sum, for services theretofore rendered to said receiver in said Circuit Court of Appeals, or for any services, because said Dorsey and Cashman were during all of the times when the alleged services were rendered attorneys of record for the defendant, Union Land and Cattle Company, in said action No. B–11, and for certain other unsecured creditors of said Union Land and Cattle Company. [100]

(4) Said District Court in said order of August 4, 1924, erred in directing said W. T. Smith as such receiver to pay to said J. W. Dorsey and

W. E. Cashman said sum of Twenty-five Hundred Dollars ($2500) or any sum whatsoever, for services theretofore rendered to said receiver in said Circuit Court of Appeals because it was error and abuse of discretion for said receiver to employ and for said Court to authorize said receiver to employ said Dorsey and Cashman as his attorneys, said Dorsey and Cashman being at the time of the rendition of such alleged services the attorneys of record for the said defendant, Union Land and Cattle Company and for certain unsecured creditors of said Union Land and Cattle Company, and it being improper and erroneous for a receiver to employ, or for a court of equity to authorize a receiver to employ, the counsel or attorneys of record for one of the parties to the litigation of which the receiver is appointed.

(5) Said District Court in said order of August 4, 1924, erred in directing said W. T. Smith as such receiver to pay to said J. W. Dorsey and W. E. Cashman said sum of Twenty-five Hundred Dollars ($2500), or any sum whatsoever, for services theretofore rendered said receiver in the Circuit Court of Appeals, or for any services, because the controversy involved in the appeal to the Circuit Court of Appeals in which said alleged services were alleged to have been performed existed between the stockholders of the defendant, Union Land and Cattle Company, and certain unsecured creditors thereof, which said Union Land and Cattle Company and said creditors were represented by said J. W. Dorsey and W. E. Cashman

on the one hand, and petitioners herein on the other hand, and because it was improper and erroneous and an abuse of discretion for said District Court to appoint as attorneys for the receiver, or for said receiver to employ, the attorneys of record for one [101] of the parties, or for one set of the parties to said litigation and to said controversy, namely, said J. W. Dorsey and W. E. Cashman, the attorneys for said Union Land and Cattle Company and said creditors.

(6) Said District Court erred in said order of August 4, 1924, in directing said W. T. Smith as such receiver to pay to J. W. Dorsey and W. E. Cashman said sum of Twenty-five Hundred Dollars ($2500), or any sum whatsoever, for services theretofore rendered said receiver in the Circuit Court of Appeals, or for any services whatsoever, because there was no evidence before the District Court that any services whatever were rendered by said Dorsey and Cashman to said receiver, or to said Union Land and Cattle Company, or to its stockholders or creditors.

(7) Said District Court erred in said order of August 4, 1924, in directing said W. T. Smith as such receiver to pay to said J. W. Dorsey and W. E. Cashman *for* Twenty-five Hundred Dollars ($2500), or any sum whatsoever, for services theretofore rendered to said receiver in the Circuit Court of Appeals, or for any services whatsoever, because said Dorsey and Cashman in open court withdrew any claim for services rendered to said receiver in said Circuit Court of Appeals.

(8) Said District Court erred in said opinion of August 4, 1924, in directing said W. T. Smith as such receiver to pay to J. W. Dorsey and W. E. Cashman the sum of Twenty-five Hundred Dollars ($2500), or any sum whatsoever, for services theretofore rendered to said receiver in said Circuit Court of Appeals, or for any services whatsoever, because there was no evidence whatsoever before said District Court that said Dorsey and Cashman rendered any such services whatsoever to said [102] Union Land and Cattle Company, or to the creditors or stockholders thereof, for which they were entitled to be paid out of the assets of said Union Land and Cattle Company in the hands of said receiver.

McCUTCHEN, OLNEY, MANNON & GREENE,
THATCHER & WOODBURN,
WARREN OLNEY, Jr.,
J. M. MANNON, Jr.,
A. CRAWFORD GREENE,
GEORGE B. THATCHER,
Attorneys for Said Interveners.

[Endorsed]: No. B-11—In Equity. In the District Court of the United States, in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant, Old Colony Trust Company, a Corporation, et al., Interveners, J. W. Dorsey and W. E. Cashman, Applicants. Assignment of Errors. Filed Oct. 31, 1924. E. O. Patterson,

Clerk. McCutchen, Olney, Mannon & Greene, Attorneys for Interveners, Balfour Building, San Francisco, California. [103]

In the District Court of the United States in and for the District of Nevada.

IN EQUITY—No. B–11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation,

Defendant;

OLD COLONY TRUST COMPANY, a Corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Interveners;

J. W. DORSEY and W. E. CASHMAN,

Applicants.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, the First National Bank of Chicago, a National Banking Association, as principal, and Fidelity & Deposit Company of Maryland, as surety, acknowledge ourselves to be indebted to the above-named Union Land and Cattle Company, a corporation, W. T. Smith as receiver thereof, J. W. Dorsey and W. E. Cashman, the appellees in the above-entitled cause, in the sum of Five Hundred Dollars ($500), conditioned that whereas on the 4th day of August, 1924, in the District Court of the United States for the District of Nevada, in a suit pending in [104] that court wherein The First National Bank of San Francisco, a corporation, was complainant, and the above-named Union Land and Cattle Company, a corporation, was defendant, an order and decree was rendered authorizing and directing said W. T. Smith as receiver of the above-named defendant, Union Land and Cattle Company, in the above-entitled action to pay to J. W. Dorsey and W. E. Cashman Twenty-five Hundred Dollars ($2500) for services theretofore rendered said receiver in the Circuit Court of Appeals, out of funds of said Union Land and Cattle Company in the hands of such receiver and the above-named interveners, Old Colony Trust Company, The First National Bank of Boston, National Bank of Commerce in New York, The First National Bank in St. Louis, National Shawmut Bank of Boston, National City Bank and First National

Bank of Chicago, having been granted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit and a citation directed to said Union Land and Cattle Company, a corporation, and said W. T. Smith as receiver of said Union Land and Cattle Company, and said J. W. Dorsey and said W. E. Cashman, as appellees, citing and admonishing them and each of them to be and appear at a session of the United States Circuit Court of Appeals to be holden in the city of San Francisco, State of California, on the 29th day of November, 1924, next.

Now, if said interveners shall prosecute their appeal to effect and answer all costs if they fail to make their plea good, then the above application to be void; also to remain in full force and effect.

FIRST NATIONAL BANK OF CHICAGO.

By O. CRAWFORD GREENE,
Its Attorney-in-fact.

FIDELITY & DEPOSIT COMPANY OF MARYLAND.

[Seal] By C. R. CARTER,
Its Attorney-in-fact. [105]

[Endorsed]: No. B–11—In Equity. In the District Court of the United States in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant. Old Colony Trust Company, a Corporation, et al., Interveners. J. W. Dorsey and W. E. Cashman, Applicants. Bond on Appeal. The within

undertaking is approved this 31st day of Oct. 1924. E. S. Farrington, Dist. Judge. Filed Oct. 31, 1924. E. O. Patterson, Clerk. McCutchen, Olney, Mannon & Greene, Attorneys for Interveners. Balfour Building, San Francisco, California. [106]

In the District Court of the United States in and for the District of Nevada.

IN EQUITY—No. B–11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation,

Defendant;

OLD COLONY TRUST COMPANY, a Corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National

Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Interveners;

J. W. DORSEY and W. E. CASHMAN,

Applicants.

PRAECIPE FOR TRANSCRIPT OF RECORD.

The petitioners and interveners herein, Old Colony Trust Company, a corporation, The First National Bank of Boston, a National Banking Association, National Bank of Commerce in New York, a National Banking Association, The First National Bank in St. Louis, a National Banking Association, National Shawmut Bank of Boston, a National Banking Association, National City Bank, a National Banking Association, and First National Bank of Chicago, a National Banking Association, in compliance with Equity Rule No. 75, hereby indicate the portions of the record to be incorporated in the transcript upon [107] appeal of said interveners from the order entered in the above-entitled cause on August 4, 1924, referred to in the petition for appeal herein, as follows:

(1) Notice of application for compensation of attorneys of Union Land and Cattle Company and Special Counsel for the receiver and for repayment of costs and expenses advanced and paid in behalf of said Union Land and Cattle Company and its creditors, filed by Messrs. J. W. Dorsey and W. E. Cashman on June ——, 1924.

(2) Minute order dated June 20, 1924, submitting above motion for decision.

(3) Opinion covering above filed August 4, 1924.

(4) Order covering above filed August 4, 1924.

(5) Statement of evidence.

(6) Petition for appeal and order allowing same.

(7) Assignment of errors.

(8) Bond on appeal and order approving same.

(9) Citation on appeal.

(10) This praecipe on appeal.

McCUTCHEN, OLNEY, MANNON & GREENE.

THATCHER & WOODBURN,
WARREN OLNEY, Jr.,
J. M. MANNON, Jr.,
A. CRAWFORD GREENE,
GEORGE B. THATCHER,
Attorneys for Said Interveners. [108]

[Endorsed]: No. B–11—In Equity. In the District Court of the United States in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant. Old Colony Trust Company, Corporation, et al., Interveners. J. W. Dorsey and W. E. Cashman, Applicants. Praecipe for Transcript of Record. Filed Oct. 31, 1924. E. O. Patterson, Clerk. McCutchen, Olney, Mannon & Greene, Attorneys for Interveners, Balfour Building, San Francisco, California. [109]

In the District Court of the United States for the District of Nevada.

No. B–11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation,

Defendant;

OLD COLONY TRUST COMPANY, a Corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Interveners;

J. W. DORSEY and W. E. CASHMAN,

Applicants.

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
District of Nevada,—ss.

I, E. O. Patterson, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of the First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant, said case being No. B–11 on the docket of said court. [110]

I further certify that the attached transcript, consisting of 111 typewritten pages numbered from 1 to 111, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein together with the endorsements of filing thereon, as set forth in the praecipe filed in said case and made a part of the transcript attached hereto, as the same appears from the originals of record and on file in my office as such clerk in the City of Carson, State and District aforesaid.

I further certify that the cost for preparing and certifying to said record, amounting to $60.50, has been paid to me by Messrs. McCutchen, Olney, Mannon & Greene, attorneys for the interveners in the above-entitled cause.

And I further certify that the original writ of error, issued in this cause, is hereto attached.

WITNESS my hand and the seal of said United States District Court, this 28th day of November, A. D. 1924.

[Seal] E. O. PATTERSON,
Clerk, U. S. District Court, District of Nevada.

[111]

In the District Court of the United States in and for the District of Nevada.

IN EQUITY—No. B–11.

THE FIRST NATIONAL BANK OF SAN FRANCISCO, a Corporation,

Complainant,

vs.

UNION LAND AND CATTLE COMPANY, a Corporation,

Defendant;

OLD COLONY TRUST COMPANY, a Corporation, THE FIRST NATIONAL BANK OF BOSTON, a National Banking Association, NATIONAL BANK OF COMMERCE IN NEW YORK, a National Banking Association, THE FIRST NATIONAL BANK IN ST. LOUIS, a National Banking Association, NATIONAL SHAWMUT BANK OF BOSTON, a National Banking Association, NATIONAL CITY BANK, a National

Banking Association, and FIRST NATIONAL BANK OF CHICAGO, a National Banking Association,

Interveners;

J. W. DORSEY and W. E. CASHMAN,

Applicants.

CITATION.

United States of America to Union Land and Cattle Company, a Corporation, and to W. T. Smith, Receiver of Said Union Land and Cattle Company, Under and by Virtue of That Certain Order Given and made by the Above-entitled Court in the above-entitled Action on July 28, 1920, and to J. W. Dorsey and W. E. Cashman, GREETING:

You and each of you are hereby notified that in that certain cause in equity in the United States District Court in and for the District of Nevada wherein The First National Bank of San Francisco, a corporation, is complainant, and Union Land and Cattle Company, a corporation, is defendant, [112] and in which W. T. Smith was by an order of said court duly given and made on July 28, 1920, appointed receiver of the properties of said Union Land and Cattle Company specified in said order, an order and decree was made and entered on August 4, 1924, authorizing and directing W. T. Smith as Receiver of the above-named defendant, Union Land and Cattle Company, in the above-entitled action to pay to J. W. Dorsey

and W. E. Cashman Twenty-five Hundred Dollars ($2500) for services theretofore rendered said Receiver in the Circuit Court of Appeals, out of funds of said Union Land and Cattle Company in his hands as such receiver, and an appeal to the United States Circuit Court of Appeals for the Ninth Circuit has been allowed to the above-named interveners in said cause, and each of them, from said last-mentioned order.

You, and each of you, are hereby cited and admonished to be and appear in said court at San Francisco, California, within thirty (30) days after the date of this citation, to show cause, if any there be, why the said order and decree so appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS, the Honorable EDWARD S. FARRINGTON, Judge of the United States District Court in and for the District of Nevada, this 31st day of October, 1924.

E. S. FARRINGTON,
United States District Judge.

[Seal] Attest: E. O. PATTERSON,
Clerk. [113]

Service of the within citation and receipt of a copy is hereby admitted this 25th day of November, 1924.

J. W. DORSEY, and
W. E. CASHMAN,
BROWN & BELFORD,
Attorneys for W. T. Smith, Receiver of Union Land & Cattle Company, Appellee.

J. W. DORSEY,
W. E. CASHMAN,
Attorneys for J. W. Dorsey & W. E. Cashman, *in pro. per.,* and for Union and Land Cattle Company, Appellees.

[Endorsed]: No. B–11—In Equity. In the District Court of the United States in and for the District of Nevada. The First National Bank of San Francisco, a Corporation, Complainant, vs. Union Land and Cattle Company, a Corporation, Defendant; Old Colony Trust Company, a Corporation, et al., Interveners; J. W. Dorsey and W. E. Cashman, Applicants. Citation. Filed Oct. 31, 1924. E. O. Patterson, Clerk.

[Endorsed]: No. 4409. United States Circuit Court of Appeals for the Ninth Circuit. Old Colony Trust Company, a Corporation, The First National Bank of Boston, a National Banking Association, National Bank of Commerce in New York, a National Banking Association, The First National Bank in St. Louis, a National Banking

Association, National Shawmut Bank of Boston, a National Banking Association, National City Bank, a National Banking Association, and First National Bank of Chicago, a National Banking Association, Appellants, vs. Union Land and Cattle Company, a Corporation, and W. T. Smith, Receiver of Said Union Land and Cattle Company, Under and by Virtue of That Certain Order Given and Made by the Above-entitled Court in the Above-entitled Action on July 28, 1920, and to J. W. Dorsey and W. E. Cashman, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Nevada.

Filed November 29, 1924.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.